

IN THE COURT OF LD. ADDITIONAL SESSIONS JUDGE-
CUM- SPECIAL JUDGE (COMPANIES ACT)
AT GREATER MUMBAI

CRIMINAL COMPLAINT NO. 20 OF 2019

IN THE MATTER OF:

Serious Fraud Investigation Office,
[Through Sh. Munish Garg,
Assistant Director & Investigating Officer,
7th Floor, Fountain Telecom Building,
MG- Road, Mumbai]

.....Complainant

Vs

IL&FS Financial Services Ltd & Ors.

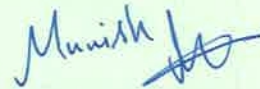
.....Accused

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Date: 30/05/2019
Place: Mumbai

Complainant



Sh. Munish Garg,

Assistant Director & Investigating Officer,
7th Floor, Fountain Telecom Building,
MG- Road, Mumbai

Through:

Hiten Venegaonkar
(Senior Central Govt. Counsel) Prosecutor, SFIO



(Pradeep Yadav)

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MG- Road, Mumbai]

.....**Complainant**

Vs

1. IL&FS Financial Services Ltd

Through Authorized Representative

Registered Address:

IL&FS Financial Centre, Plot No. C-22, G
Block, Bandra Kurla Complex, Bandra East
Mumbai, Maharashtra-400051

2. Ravi Parthasarathy

At: 1201/1202 Vinayak Angan, Old
Prabhadevi Road, Prabhadevi, Mumbai -
400025

Mob. No. - 9820190600

3. Hari Sankaran

At: Everglades, 21st Road, Near Executive
Enclave Hotel, Bandra West, Mumbai -
400050

Mob. No. - 9820190669

**Presently in Judicial Custody in Mumbai
Central Jail**

4. Arun Saha

At: House No. 601/602, Green Acres, 61B,
Pali Hill, Nargis Dutt Road, Behind Dilip
Kumars Bungalow, Bandra West, Mumbai –
400050

Mob. No. – 9820077051

5. Vibhav Kapoor

At: 26th Floor, Kanchan Ganga Building,
Kemps Corner, Peddar Road, Mumbai – 26

Mob. No. – 9820040334

6. K Ramchand

At: 31, Victoria, Sarojini Road, Santa Cruz
(W), Mumbai – 400050,

Mob. No. – 9892800805

7. Ramesh C Bawa

Also at: W – 78, Ground Floor, Greater
Kailash – New Delhi – 110048

**Presently in Judicial Custody in Mumbai
Central Jail**

8. Milind Patel

At: 13A, Vaibhav, 80 Bhulabhai Desai
Road, Next to American Consulate Mumbai
– 400026,

Mob. No. – 9820000275

9. Rajesh Kotian

At: B 3701, DB Woods, Gokuldham,
Goregaon East, Mumbai – 400063

Mob No. – 9820126529

10. Udayan Sen

At: Flat No. 1802, A Wing, 18th Floor,
LodhaBellissimo, N M Joshi Marg,
Mahalaxmi (East), Mumbai, Mumbai City,
Jacob Circle, Maharashtra – 400011

Mob. No. – 9820224774

11. Kalpesh J Mehta

At: 603, Ronit Arcad, S V Road, Opposite
Kandivali Telephone Exchange, Kandivali
(West), Mumbai – 67

Mob No. – 9821619013

12. N Sampath Ganesh

At: C- 2304, Oberoi Splendor, Jogeshwari
Vikhroli Link Road, Andheri (E),

Mumbai - 400060

Mob. No. – 9820095961

13. Deloitte Haskins and Sells LLP

Through its Partner

At: 32nd Floor, India Bulls Finance Centre,
Elphinston Mills Compound, Elphinstone,
Mumbai – 400013

14. BSR and Associates LLP

Through its Partner

At: IT Building No. 2, Hall No. 4, Nesco IT
Park, Goregaon, Mumbai – 400063

15. Surinder Singh Kohli

At: J 170, Rajouri Garden,
New Delhi.

16. Subhalakshmi Panse

At: Row House B – 3, Roseland Residency,
Pimple Saudagar, Pune – 411027,

Mob. No. – 9730256103

17. Deepak Pareek

At: D.B Woods, B-Wing,
601, Krishna Vatika Marg,
Gokul Dham, Goregaon East,
Mumbai -06

18. C Sivasankaran and his group

Companies

At:30, Giri Road, Thiyagaraya Nagar,
Chennai, Tamil Nadu – 600017
Mob. No. – 9003014627

19. Shahzaad Dalal

At: Flat No. 5, Aurum Platz,
BN Cross Lane, Mumbai – 400007

20. Manu Kochhar

At: B 91, Cozi Home,
Pali Hill, Bandra West, Mumbai – 400050

21. Renu Challu

At: A34/1, Afochs, Laxmi Narayana Temple,
Sainikpuri, Tirumal Agiri, Hyderabad – 500094

22. Uday Ved

At: D-1101, Kukreja Palace, Vallabhbaug Extn Road,
Garodia Nagar, Ghatkopar (East), Mumbai -
400077

23. Neera Saggi

At: Flat No.1002, Atlantis Bldg, Raheja Acropolis-I CHSL,
Deonarpada Road, Deonar Village, Chembur,
Mumbai – 400088

24. Shrenik Baid

At: DHS LLP, 1st Floor, Lotus Corporate Park,
Goregaon (E), Mumbai – 400063

25. Rakesh Kumar Jain

At: 606, Glory D, Vasant Marvel Society,
Boarivali (E), Mumbai – 400066

26. Nishit Dipak Udani

At: Deloitte Haskins & Sells LLP, Lotus Corporate Park,
Goregaon (E), Mumbai – 400063

27. Anuj Rawat

At: 404, Bright, City of Joy, ACC Road,
Mulund (W), Mumbai – 400080

28. Payal Mukeshbhai Rathod

At: C – 309, Saidham CHSL, Vaisahli Nagar,
Dahisar (E), Mumbai – 400068

29. A P Shah Associates

At: 7/11, Kalyan Building,
Khadilkar Road, Mumbai - 400004

Through its Proprietor A P Shah

30. A P Shah

At: 7/11, Kalyan Building,
Khadilkar Road, Mumbai - 400004

.....Accused

COMPLAINT U/S 439 (2) R/W SECTION 436 (1)(a),(d) &
(2) R/W SECTION 212 (15) OF THE COMPANIES ACT
2013 R/W 621 (1) OF THE COMPANIES ACT, 1956R/W
SECTION 193 OF THE CODE OF CRIMINAL
PROCEDURE, 1973 SEEKING TAKING OF COGNIZANCE
AND PROSECUTION OF THE ACCUSED NAMED HEREIN
ABOVE FOR THE OFFENCES, COMMITTED BY THEM
JOINTLY AND SEVERALLY, MENTIONED HEREIN
UNDER:-

- **Sections 447, 36 R/W 447, 143 R/W 147, 129 R/W448, 184 (4) of the Companies Act 2013.**
- **Sections 68, 211 R/W 628 of the Companies Act 1956.**
- **Sections 120B of the Indian Penal Code, 1860 R/W 447 of the Companies Act, 2013, 417, 420, of the Indian Penal Code, 1860 R/W 120B of the Indian Penal Code, 1860.**

The Complainant above-named submits as under: -

1. That the Complainant, i.e. Serious Fraud Investigation Office (hereinafter referred as the **"SFIO"**), is a statutory office constituted and established under section 211 of the Companies Act of 2013 (herein after referred as the **Act of 2013**).
2. That the present complaint is being filed seeking prosecution jointly and severally against the Accused Persons mentioned herein above from A1 to A30 for various violations & offences punishable under the provisions of Companies Act of 1956 (hereinafter referred as the **"Act of 1956"**), and Companies Act of 2013 (hereinafter referred as the Act of 2013) of and also for committing of offences punishable under the provisions of the Indian Penal Code of 1860 (herein after referred as the **"I.P.C."**).
3. That the complaint is being filed and represented through **Sh. Munish Garg, Assistant Director & Investigating Officer**, in his official capacity acting and / or purporting to act as such Public Servant in discharge of his official duties conferred upon him by the Central Government, Ministry of Corporate Affairs (hereinafter referred as the **"MCA"**) vide order No. F. No. 4/2/2018/SFIO/CL-II, dated 11.09.2018, issued under section 439 (2) of the Companies Act 2013 r/w 621 (1) of the Companies Act, 1956. The Complainant has further been authorized by the Director, SFIO, vide Order

No. SFIO/PROS/0010/2019 (PF) dated 30/05/2019, to file the present complaint. Copy of the orders dated 11.09.2018 & 30/05/2019 are annexed herewith and marked as **Annexure A- & Annexure B- respectively.**

4. That case in hand arises out of order of investigation passed by the Central Government i.e. Ministry of Corporate Affairs (herein-in-after referred as “**MCA**”), whereby, MCA, “in the public interest”, on basis of cogent material, framed its opinion that investigation into the affairs of several companies i.e. Infrastructure Leasing and Financial Services Limited (**IL&FS**) and its subsidiary companies, is necessary to be conducted by SFIO and accordingly, passed an order bearing order No. 03/679/2018/CL-II (WR) dated **30.09.2018** in this regard in exercise of its powers conferred under section 212(1)(c) of the Companies Act 2013.**Annexures C**
5. That pursuant to the MCA’s aforesaid order dated 30.09.2018, Director SFIO, in exercise of its power’s u/s 212 (1) r/w 212 (4) of the Companies Act, 2013, vide Order No. SFIO/Inv./AOI/2018-19 dated 01.10.2018, appointed a team of Inspectors for carrying out the aforesaid investigation. Further, the complainant, was designated as an Investigation Officer in terms of section 212(4) of the Companies Act, 2013.**Annexure D-**
6. That during investigation it was revealed that **IL&FS Financial Services Ltd. (hereinafter as ‘IFIN’)** is one of the subsidiary companies of the **IL&FS Group**, whose investigation has also been ordered by MCA as stated above. Accordingly, investigation was conducted as directed vide orders dated 30.09.2018 and Investigation Report was submitted to the MCA on 28.05.2019. **A copy of the Investigation Report dated 28.05.2019, along with all its annexures, a list of which is given at page 796 to 800 of the said report, is collectively annexed hereto and marked as Annexure -E-**

7. It is submitted that as per **section 212 (15) of the Companies Act, 2013**, the aforesaid investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer u/s 173 of Code of Criminal Procedure, 1973 (hereinafter as '**Cr.P.C**'). Hence, the complainant relies upon all the documents & statements mentioned in the investigation report and for the sake of convenience and to avoid any confusion the said documents **shall be referred to with the Annexure number affixed to the same in the investigation report.**
8. That the MCA, in exercise of its powers u/s 212 (14) of the Act of 2013, vide its letter no. **F.No. Legal-35/16/2019 dated 29.05.2019**, has issued necessary directions to the office of the Complainant to file and initiate prosecution against the accused persons named herein above for the offences mentioned herein. **Annexure -F**

That summary of findings/violations as per the investigation report & MCA's order dated 29.05.2019 are as under: -

Charge No	Nature of charges	Method Adopted	Names of persons liable	Year	Relevant Section (Ref.) and documentary evidences
1	Fraud with intent to injure the interests of the company, its shareholders and creditors resulting into wrongful loss to the Company. Mr. C Sivasanakaran connived with the	Coterie controlling the day-to-day affairs of the IFIN colluded and in order to avoid Non-Performing Asset of the defaulting loan facilities lent to other companies belonging to the borrowing group for repaying the principal and/or interest of the defaulting borrower company. The above modus operandi was in	IFIN(A1) Ravi Parthasathy (A2) Hari Sankaran(A3) Arun Saha(A4) Vibhav Kapoor(A5) K Ramchand(A6)	2011-12 to 2017-18 2011-12 to 2017-18 2011-12 to 2017-18 2011-12 to 2017-18 2011-12 to 2017-18	Section-447 Section- 417, 420 r/w 120B of IPC Documentary Evidences MCA Filings Data received from the Desktop(s) and Laptop(s) from the Office of IL&FS&IFIN. RBI Inspection Report(s) Credit Approval Memorandum(s)

Charge No	Nature of charges	Method Adopted	Names of persons liable	Year	Relevant Section (Ref.) and Documentary evidences
	<p>top management of the IFIN and received wrongful gain on the form of loan from the IFIN with intention to not repay the same.</p> <p>Statutory Auditors collided with the management of the IFIN and fraudulently falsified the books of accounts and thereby financial statements From FY 2013-14 to 2017-18.</p> <p>The members of the Audit Committee connived with the Coterie and overlooked the violations of the norms by them resulting into unlawful loss to the Company.</p>	<p>the violation of the RBI directions. This process was repeated multiple times with the earlier loan facility getting closed and a new facility being created which was again funded, on their default, through another cycle of funding through the same or another group company. Ultimately, the final loan facility was declared NPA or written off or is still outstanding in most of these cases resulting in delayed recognition of NPAs, ballooning of debt and ultimate higher loss to IFIN and its stakeholders. Similarly, lending of IFIN to its group companies increased substantially and it reached to 37% of total loans and advances in F.Y. 2017-18 and to circumvent the RBI guidelines they devised illegal strategy for IFIN to lend the money to its group companies by funding to vendors/contractors of the ITNL. Members of the Coterie, abused their position, connived and through these fraudulent modus operandi of delaying the date for classifying the defaulting borrowers as NPA and making provision for them with a view to keep IFIN and</p>	<p>Ramesh Bawa(A7) C</p> <p>Milind Patel(A8)</p> <p>Rajesh Kotian(A9)</p> <p>C Sivasankaran and his group companies (for the role in Siva group)(A18)</p> <p>Udayan Sen(A10)</p> <p>Kalpesh Mehta(A11)</p> <p>Sampath Ganesh(A12)</p> <p>Deloitte Haskins and Sells LLP(A13)</p> <p>BSR and Associates LLP(A14)</p> <p>S S Kohli(A15)</p> <p>Subhalakshmi Panse(A16)</p> <p>Shahzaad Dalal (A19)</p> <p>Manu Kochhar (A20)</p> <p>Renu Challu (A21)</p> <p>Uday Ved (A22)</p> <p>Neera Saggi (A23)</p>	<p>2011-12 to 2017-18</p> <p>2011-12 to 2017-18</p> <p>2011-12 to 2017-18</p> <p>2011-12 to 2017-18</p> <p>2017-18, 2016-17</p> <p>2015-16, 2014-15, 2013-14, 2012-13,</p> <p>2017-18</p> <p>2012-13 to 2017-18</p> <p>2017-18</p> <p>2017-18, 2016-17, 2015-16, 2014-15, 2013-14, 2012-13</p> <p>2017-18, 2016-17, 2015-16, 2014-15</p> <p>2006-2015</p> <p>2004-2015</p> <p>2017-18</p> <p>2015-18</p> <p>2015-2016</p>	<p>Minutes of Audit Committee Meeting(s),</p> <p>Minutes of Board Meeting(s)</p> <p>Minutes of Nomination and Remuneration Committee Meeting(s)</p> <p>Unified Approval Frameworks</p> <p>Policies of IFIN</p> <p>E-mails extracted from the IL&FS Server</p> <p>Tally Data received from C Sivasankaran</p> <p>Relevant financial Statement(s) of the IL&FS, its subsidiaries/associates /SPVs/ Joint Ventures/ borrowing companies for the period 2007-08 and /or/ to 2017-18.</p> <p>Copies of the Relevant Statements recorded during the Course of Investigation</p> <p>Relevant papers regarding audit of the companies as per list of documents as annexed with the series Annexure Aud 1 to Aud 33</p> <p>Oral Evidences</p> <p>Copies of the relevant statements, recorded on oath, during the course of Investigation, as per Annexure.</p>

Charge No	Nature of charges	Method Adopted	Names of persons liable	Year	Relevant Section (Ref.) and documentary evidences
		<p>other Its group companies afloat. Mr. C Sivasanakaran connived with the top management of the IFIN and received wrongful gain on the form of loan from the IFIN with intention to not repay the same. Statutory auditor connived and colluded with Coterie to conceal material information/facts, and in fraudulently falsifying the books of accounts and thereby financial statements From FY 2013-14 to 2017-18. The auditor knowingly did not report the true state of affairs of the company, particularly negative NOF and negative CRAR, had resulted in the causing loss to creditors of the company who had lent and invested in the NCDs.</p> <p>The members of the Audit Committee were aware of the stressed asset portfolio, the modus operandi used for granting loans to group companies of existing defaulting borrowers and the RBI Inspection Reports but they connived with the management and overlooked the numerous impairment indicators in contravention of the accounting</p>			

Charge No	Nature of charges	Method Adopted	Names of persons liable	Year	Relevant Section (Ref.) and documentary evidences
		standards and principals of prudence by agreeing with the decision of management to differ the provision of diminution in books of accounts			
2	Deliberately presented false and deceptive and misleading statement with a view to obtain credit facilities from banks and financial institutions.	IFIN provided its falsified, spruced up financial statements and did not disclose details of the NOF and CRAR observations of RBI to the Credit Rating Agencies, which continued to give them the highest rating till the later part 2018. The banks and the investors in NCDs and CPs had relied on the disclosures made in the Information Memorandum and the financial statements besides the highest ratings obtained from the rating agencies for lending their money to the company.	Ravi Parthasathy (A2) Hari Sankaran(A3) Arun Saha(A4) Vibhav Kapoor(A5) K Ramchand(A6) Ramesh C Bawa(A7) Milind Patel(A8) Rajesh Kotian(A9) S S Kohli(A15) Subhalakshmi Panse(A16) Shahzaad Dalal (A19) Manu Kochhar (A20) Renu Challu (A21)	2011-12 to 2017-18 2011-12 to 2017-18 2011-12 to 2017-18 2011-12 to 2017-18 2011-12 to 2017-18 2011-12 to 2017-18 2011-12 to 2017-18 2011-12 to 2017-18 2017-18, 2016-17, 2015-16, 2014-15, 2013-14, 2012-13 2017-18, 2016-17, 2015-16, 2014-15 2006-2015 2004-2015 2017-18 2015-18	Section 36 Read with Section 447 As per list of documents as annexed with the series Annexure BL 1 to BL 9 Copies of the Relevant Statements recorded during the Course of Investigation Oral Evidences Copies of the relevant statements, recorded on oath, during the course of Investigation, as per Annexure

Charge No	Nature of charges	Method Adopted	Names of persons liable	Year	Relevant Section (Ref.) and Documentary evidences
			Uday Ved (A22) Neera Saggi (A23)	2015-2016	
3	Failure in discharging duties by Statutory Auditors under Section 143 Of Companies Act, 2013 punishable under Section 147 of Companies Act, 2013	Statutory Auditors of IFIN failed to perform their duties diligently and did not use professional skepticism to ensure true & fair disclosure of state of affairs of the company. They in-fact, colluded with officials of the companies in order to conceal their fraudulent activities and thus, they had failed to perform their duties as required from them u/s 143 of the Companies Act, 2013	Udayan Sen (A10) Kalpesh Mehta(A11) Sampath Ganesh(A12) Deloitte Haskins and Sells LLP(A13) BSR and Associates LLP (A-14) Shrenik Baid (A24) Rakesh Kumar Jain (A25) Nishit Dipak Udani (A26) Anuj Rawat (A27) Payal Mukeshbhai Rathod (A28) A P Shah Associates (A29) A P Shah (A30)	2017-18, 2016-17 2015-16, 2014-15, 2013-14 2017-18 2016-17, 2015-16, 2014-15, 2013-14 2017-18 2016-17, 2017-18 2008-09, 2017-18 2017-18 2009-10, 2017-18	Section 143 & 147 of the Companies Act, 2013. Documentary/Digital Evidence As per list of documents as annexed with the series Annexure Aud 1 to Aud 33 Relevant Annexure of the Investigation Report Copies of the Relevant Statements recorded during the Course of Investigation ORAL EVIDENCE Statements recorded on oath of Udayansen, Sampath Ganesh, Kalpesh Mehta, Shraink Baid, Nishit Udani, Rakesh Jain, Anuj Rawat, Payal Rathod, A P Shah
4.	Liability u/s 211 r/w Section 628 of the Companies Act, 1956, U/S 227/233 R/W Section 628 OF Companies Act, 1956. Liability U/S 129 R/W	The financial statements prepared and filed by the company were not giving a true and fair view of the state of affairs of the company, as the Financial statements for FY 2010-11 to 2017-18 were not in compliance with the applicable accounting	Ravi Parthsarthy(A2) Ramesh C Bawa(A7) Milind Patel (A8) Deepak Pareek(A17) CA Uday Sen(A10)	2011-12 to 2017-18 2011-12 to 2017-18 2011-12 to 2017-18 2011-12 to 2017-18 2016-17, 2017-18	Section 211 R/W S.628 of the Companies Act, 2013 and Section 129 R/w Section 448 of the Companies Act, 2013 Documentary Evidences Copies of the Relevant Statements recorded during the Course of Investigation MCA Filings RBI Inspection Reports

Charge No	Nature of charges	Method Adopted	Names of persons liable	Year	Relevant Section (Ref.) and documentary evidences
	Section 448 of the Companies Act, 2013 as balance sheets and profit and loss accounts of IFIN do not give true and fair view of affairs	standards notified under Section 133 of the Companies Act 2013 and/or under Section 211 of the Companies Act 1956. the management should have reported the funding of principal amount to defaulting borrowers fraudulently as old loans as NPA instead have provided provisioned considering the substance of over form of the transaction of advancing new loans, however, the fraudulent new loans to defaulting borrowers were accounted as new loans and not recognized as NPA resulting into creation of accounts statement not giving the true and fare view of the financials of the Company. The signatory of these accounts including statutory auditors of the IFIN have suppressed the information of various loans, inflated the profits of the Company which presented a rosy picture	Deloitte Haskins & Sells(A13) CA Kalpesh J Mehta(A11) CA N Sampat Ganesh(A12) B S R & Associates LLP(A14)	2011-12, to 2017-18 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 2017-18 2017-18	Credit Approval Memorandums E-mails extracted from the IL&FS Server Relevant financial Statements of the IL&FS, its subsidiaries/associates /SPVs/Joint Ventures/ borrowing companies for the period 2007-08 and /or/to 2017-18. Relevant Annexures of the Investigation Report
5	Liability U/S 184 of the companies act, 2013 as Ramesh C Bawa director of IFIN failed to disclose his interest	Ramesh C Bawa a director in IFIN had not disclosed his interest in AAA Info Systems Private shareholding and AAAB Infrastructure Private Limited, in which his wife	Ramesh C Bawa(A7)	2017-18	Section 184 (4) of the Companies Act, 2013. Documentary Evidences Form MBP-1 dated 01/04/2017 submitted by Ramesh C. Bawa

Charge No	Nature of charges	Method Adopted	Names of persons liable	Year	Relevant Section (Ref.) and documentary evidences
	in annual filings	and daughter are directors.			<p>Oral Evidences</p> <p>Copies of the relevant statements, recorded on oath, during the course of Investigation, as per Annexure.</p>

9. That, the instant complaint is being filed on basis of the Investigation Report dated 28.05.2019& MCA's order dated 29.05.2019. The facts which warranted the prosecution under the offence mentioned in the complaint are discussed in detail in the investigation report and the complainant craves leave of this Hon'ble Court to refer and rely upon the contents of the investigation report pertaining to the violations of the respective provisions and they be read as part and parcel of the instant complaint and the same are being referred to here only in brief.

DESCRIPTION OF THE ACCUSED VIS-À-VIS THEIR ROLE

1. It is submitted that the investigation into the affairs of IFIN(A1) revealed that IFIN is 100% subsidiary of IL&FS Limited. IFIN is registered as a Systematically Important Non-Deposit taking Non-Banking Finance Company (NBFC-ND-SI) with Reserve Bank of India (RBI). More than ninety percent of income of IFIN was derived from fund-based activities, mostly lending. It is also into debt syndication, corporate advisory and investment banking.
2. Ramesh Bawa(A7), Hari Sankaran(A3), Arun Saha(A4), Vibhav Kapoor(A5) and Ravi Parthasarathy(A2), K Ramchand(A6) were controlling the affairs of the IFIN and were the decision makers in the IL&FS group. The Executive Management Team was headed by Ramesh Bawa, the MD & CEO who was appointed as MD & CEO

in 2008 and was also on the Board of IFIN. He was assisted by Milind Patel(**A8**), Joint M.D. and Rajesh Kotian Deputy MD(**A9**).

3. Investigation revealed that as part of its lending business, IFIN extended loans facilities to external parties (other than its group companies), IFIN extended loans to companies of Siva, ABG, A2Z, Pasvnath Group and other companies. A number of these borrowers were not servicing their debt obligation timely. The top management of IFIN(**A2-A9**) were aware of the potential problematic accounts which were getting stressed in the succeeding months from the reports generated through the Management Information System (**'MIS'**) of the IFIN. The aforesaid stressed accounts would have adversely impacted the financial statements of IFIN, therefore, the management of the IFIN (**A2-A9**) adopted fraudulent practices in order not to let aforesaid loan/credit facility be classified as a Non Performing Asset (**NPA**) and further to avoid provisioning for such NPAs/defaulting loan facilities, which was otherwise required to be done so under the RBI Directions to NBFCs. In this regard, they started lending to other companies belonging to the same/aforesaid borrowers for repaying the principal and/or interest of the aforesaid defaulting borrower. The above acts of the Coterie were known to the independent Directors A-19 to A-23 and other Directors including the Accused A-17 who was CFO of the IFIN and one of the of the person who process the loan applications.
4. Similarly, Independent Directors and CFO of the Company (**A17 & A19-A23**) are appointed with objective to help the company in improving corporate credibility and governance standard but they ignored all alarming indicators and failed to save the interest of the Company and its stakeholders by not raising of these issues in the Board Meetings and remained mute spectator.

5. Investigation revealed that loans were approved by management of the IFIN **(A2-A9)** for Siva Group of Companies. It is revealed that the said lending to Siva group was approved fraudulently in furtherance of the connivance with C Sivasankaran **(A18)**, who was the controlling will and mind of all his group entities/Siva Group & he had close relationship with Ravi Parthasarathy **(A2)** and Hari Sankaran **(A3)**. Investigation revealed that the management of the IFIN abused their position by giving the loans to Siva Group of Companies as some of the companies of Siva Group has failed to repay the earlier loans granted to them by IFIN. In the said process, interest of the IFIN was injured as wrongful loss was caused to the Company and loan amount to the Siva Group could not be recovered. It also caused wrongful gain to C Sivasankaran **(A18)**.

It is revealed that Ravi Parthasarathy and Hari Sankaran took hospitality from C Sivasankaran and used IL&FS group as their personal fiefdom to provide these wrongful gains to Sivasankaran illegally and by violating all the norms and policies of RBI and the company itself.

6. Investigation revealed that IFIN being an NBFC was regulated by the guidelines and directions of the RBI. The lendings to group entities was governed by the credit concentration norms for the group entities and also the computation of net owned fund (NOF) wherein it was stipulated that if the exposure to a group entity is in excess of 10% of NOF then the same was required to be deducted from NOF computation. However, investigation revealed that the lending of IFIN to its group companies increased significantly from the Financial Year 2012-13 onwards, with the lending percentage crossing double digits to 15% of total loans and advances in the year. In the subsequent years, it continued increasing and more than doubled to around Rs. 5200 crore i.e. 37% of total loans and advances in F.Y. 2017-18.

7. It is revealed that in order to continue funding its group companies, prevent them from defaulting, and at the same time not to breach the credit concentration norms of RBI, the coterie **(A2-A9)** in connivance with Independent Directors, Directors, CFO of the IFIN, Group CFO **(A17 & A19-A23)** abused their positions and used various *modus operandi* to continue lending from IFIN to group entities, by causing wrongful loss to IFIN & its stakeholders such as investors and creditors whose money it was misusing for fraudulent lending, which ultimately resulted in ultimate loss to the company, and its creditors.
8. Investigation further revealed that in case of lending to group entity i.e. IL&FS Transport Network Limited (**'ITNL'**) in breach of RBI guidelines/directions, the management of the IFIN **(A2-A9)** devised an illegal strategy for IFIN to lend the money to its group companies. In this regard, it is revealed that the lending was carried out to eight entities without carrying out any due diligence or verification of actual requirement of funds, and without ensuring adequate security cover for these entities.
9. Investigation further revealed one of the other *modus operandi* used by the **A2-A9**, whereby they decided to support group entities by lending through vendors/third parties. In order to do so, the books of accounts of fourteen existing borrowers or contractors of IFIN or ITNL such as Beigh Construction, GHV group, New India Structures Private Limited, Avance Technologies Ltd. and Empower India Ltd. were used for onward lending to ITNL or its subsidiaries/SPVs. Investigation revealed that all the loans to these entities have been given on the basis of letter of comfort of ITNL and no security has been taken from these borrowing entities/intermediaries.

Investigation revealed that such fraudulent transactions were taken up to bypass the RBI Directions on group lending. This clearly brings out the intent of the

coterie **(A2-A9)** to disregard legal Directions for prudential functioning of NBFCs by RBI.

10. Investigation revealed that in furtherance to the aforesaid different *modus operandi used by IFIN*, had fraudulently avoided creation of provisioning for the stressed assets and its eventual writing off. It had self-funded the interest obligation from the borrowers and also various fees charged to the group entities. In this manner it had created a rosy top line of the financials of the company. Thus, the financials of the company were fudged up by its management in connivance with others and were not reflecting true and fair picture of the affairs of the company.
11. Investigation revealed that in furtherance of the aforesaid *modus operandi*, the statutory auditors of the IFIN **(A10, 14)** connived with the management of the company to conceal material information/facts, in in not reporting on the fraudulently falsified books of accounts and thereby financial statements from FY 2011-12 to 2017-18.
12. Investigation revealed that the Audit Committee members **(A15, 16, 4)** and Independent Directors, Director, CFO of the IFIN and group CFO of the IL&FS **(A17 & A19-A23)** were aware of the stressed asset portfolio, the *modus operandi* used for granting loans to group companies of existing defaulting borrowers in order to prevent their being classified as NPA. They did not ensure adequate disclosure or reporting of the facts brought out in these reports based on explanations given by management. They connived with the management **(A2-A9)** they being part of the board were aware of the various RBI Reports and stood at mute spectators of the management decisions and overlooked the numerous impairment indicators in contravention of the accounting standards and principals of prudence by agreeing with the decision of management to defer the provision of diminution in books of accounts.

DESCRIPTION OF CHARGES

13. The facts and violation of law thereof as revealed during investigation constituting the offences are stated hereinafter.

CHARGE NO. 1: FRAUD PUNISHABLE UNDER SECTION 447 OF THE COMPANIES ACT, 2013 AND SECTION 417, 420 R/W 120B OF THE INDIAN PENAL CODE, 1860: -

14. Investigation revealed that IFIN is a 100% subsidiary of IL&FS. Ravi Parthasarthy(A2), Hari Sankaran(A3) and Arun K Saha(A4), who are also on the Board of Directors of IL&FS were also on the Board of Directors of IFIN. Ravi Parthasarthy was the Chairman of IL&FS as well as IFIN. Ramesh C Bawa(A7) was the Managing Director of IFIN. Vibhav Kapoor(A5) was the Chief Investment Officer of the IL&FS group and also on the Board of IFIN. These persons along with K Ramchand(A6), Managing Director of IL&FS Transportation Networks Limited have also been with the IL&FS group for substantial number of years (since the 1990s) and holding senior, top management positions, as well as Directorships in various group companies. They were the coterie of individuals, led by Ravi Parthasarthy, who were controlling the affairs and decision making in the IL&FS Group as well as in IFIN.

15. Investigation revealed that the members of the coterie(A2-A9) had adopted various *modus operandi*, abusing their position in IFIN, flouting regulatory/legal stipulations for an NBFC and company policies, in its lending operations to various external corporate groups as well as its group companies, to the detriment of IFIN and the creditors of the company.

Lending to Non-Group Companies

16. Investigation revealed that IFIN being an NBFC was in the business of lending. As part of its lending to external parties (other than its group companies), IFIN extended loans to companies of Siva, ABG, A2Z, Pasvnath group and other corporate groups. A number of these borrowers were not servicing their debt obligation timely. The management of IFIN (**A2-A9**) were aware of the potential problematic accounts which were getting stressed in the succeeding months of the reports generated through the Management Information System (**'MIS'**) of the IFIN. The aforesaid stressed accounts would have adversely impacted the financial statements of IFIN, therefore, the management of the IFIN (**A2-A9**) in connivance with other accused adopted fraudulent practices in order not to let aforesaid loan/credit facility classified as a Non Performing Asset (**NPA**) and further to avoid provisioning for such NPAs/defaulting loan facilities, which was otherwise required to be done so under the RBI Directions. In this regard, they fraudulently lent to other companies belonging to the same/aforesaid borrowers for repaying the principal and/or interest of the aforesaid defaulting borrower. This process was repeated multiple times with the earlier loan facility getting closed and a new facility being created which was again funded, on their default, through another cycle of funding through the same or another group company. Such manner of debt servicing led to ballooning up of the outstanding liabilities against a group, which were funded from the borrowings from market. Ultimately, the final loan facility was declared NPA or written off or is still outstanding in most of these cases resulting in delayed recognition of NPAs, ballooning of debt and ultimate higher loss to IFIN and its stakeholders. The above acts of the Coterie were known to the independent Directors A-19 to A-23 and other Directors including the Accused A-17 who was CFO of the

IFIN and one of the of the person who process the loan applications.

17. Investigation revealed that the approving authorities (**A2-A9**) were fully aware of the stressed condition, not only of the company/IFIN but also of the borrowing companies. In many cases the flagship company of the borrowing company was already under Corporate Debt Restructuring. Fresh loans were approved despite IFIN's internal documents and Credit Approval Memorandum '**CAM**' highlighting issues with the borrowing company/group including liquidity issues, deterioration of security cover below the limits laid down for such lending by the company/IFIN and without taking fresh cover. In many cases, loans have been given against the company policy of lending with a minimum spread of 2%. The accused A-17 was also ware of the above decisions being part of the Credit approval.

Lending to Group Companies

18. Investigation revealed that IFIN being an NBFC was regulated by the guidelines and directions of RBI. The limit to lendings to group entities was governed by the credit concentration norms for the group entities and had the impact on computation of net owned fund (NOF) wherein it was stipulated that if the exposure to a group entity is in excess of 10% of NOF then the same was required to be deducted from NOF computation. However, investigation revealed that the lending of IFIN to its group companies increased significantly from the Financial Year 2012-13 onwards, with the lending percentage crossing double digits to 15% of total loans and advances in the year. In the subsequent years, it continued increasing and more than doubled to around Rs. 5200 crore i.e. 37% of total loans and advances in F.Y. 2017-18.

19. It is revealed that the key reason for the aforesaid increase in lending was that IL&FS as the holding company, which was a core investment company (NBFC/CIC), and was having the mandate to lend to its group entities had reached the limits beyond which it could not lend. Having reached the limits the coterie relied on IFIN to fund the requirements of the group entities.
20. It is revealed that in order to continue funding its group companies, prevent them from defaulting, and at the same time not to breach the credit concentration norms of RBI, the coterie **(A2-A9)** abused their positions and used various modus operandi to continue lending from IFIN to group entities, causing wrongful loss to IFIN& its stakeholders such as investors and creditors whose money it was misusing for the fraudulent lending.

Therefore, IFIN resorted to fresh lending to various group companies, either directly or through another group companies, to repay the earlier loans to prevent defaults and therefore classifying these as NPAs. Many of the companies which were used for onward lending had not even started operations, did not have any upcoming project and also in many cases the CAMs mentioned that these were for onward lending. The interest of group companies overrode the interest of IFIN and its stakeholders in such lending.

21. Investigation further revealed that in the case of lending to group entity i.e. IL&FS Transport Network Limited **(‘ITNL’)** in breach of RBI guidelines/directions, the management of the IFIN **(A2-A9)** devised an illegal strategy for IFIN to lend the money to its group companies. In this regard, it is revealed that the lending was carried out to eight entities without carrying out any due diligence or verification of actual requirement of funds, and without ensuring adequate security cover for these entities. The purpose mentioned for borrowing the funds was very vague and general. In cases like Rapid Metro Railway and Sabarmati Capital Two, project’s implementing entities

could not justify the requirement of the funds as these entities were already into implementation phase of the projects after financial closure and had not even provided any Lender Independent Engineer (LIE) reports for requirement of funds beyond the financial closure amounts of the projects.

22. Investigation further revealed one of the other *modus operandi* used by the **A2-A9**, whereby they decided to support group entities by lending through vendors/third parties. In order to do so, the books of accounts of fourteen existing borrowers or contractors of IFIN or ITNL such as Beigh Construction, GHV group, New India Structures Private Limited, Avance Technologies Ltd. and Empower India Ltd. were used for onward lending to ITNL or its subsidiaries/SPVs. Investigation revealed that all the loans to these entities have been given on the basis of letter of comfort of ITNL and no security has been taken from these borrowing entities/intermediaries. The purpose of the loans is very vague and general. Most of these entities were transferring the funds on the same day to the destined ITNL/ITNLSPVs. It has been further revealed that officials of IFIN and group companies approached the contractors/borrowers for taking up the loan from IFIN and thereafter doing onward lending to ITNL.

Investigation revealed that such fraudulent transactions were taken up to bypass the RBI Directions on group lending. RBI had, in its annual inspection reports pointed out at the adverse impact of these on the Net Owned Funds (NOF) and capital to risk-weighted assets ratio (CRAR), which are critical parameters for NBFC's continuation as a going concern. This clearly brings out the intent of the coterie (**A2-A9**) to disregard legal Directions for prudential functioning of NBFCs. The intent to hoodwink the regulator, and thereby conceal critical financial parameters, also clearly comes out in the false assertion made by Ramesh Bawa (**A7**) in his letter dated

July 20, 2018 to RBI stating that the company has not made any fresh exposure to group companies post November 2017.

In extending fresh loans to other group companies of the defaulting borrowers, the intent of the coterie was to postpone/avoid recognition of the asset as Non-Performing Asset and thereby avoiding consequent provisioning, as mandated by RBI. This *modus operandi* led IFIN to project high asset quality and recognition of high revenues. Suppression of NPA and non-provisioning for NPA further led to show a rosy picture of the financial statements of IFIN. The fraudulent/fabricated financial statements were used for the purpose of accessing the funds of public.

Investigation revealed that by maintaining spruced up financials and concealing the parameters of NPA and CRAR, IFIN was borrowing funds in the form of bank loans, non-convertible debentures and commercial papers, etc. and prolong its existence as a going concern. The Company advanced the borrowed funds to borrowers to pay outstanding interest to IFIN. It resulted in overstatement of profits of the company. These profits were basis for payment of higher dividend to the holding company i.e. IL&FS Limited. These fictitious profits were the basis for payment of higher remuneration and PRP to the management of IFIN& indirectly to the directors drawing their salary from IL&FS. The directors of IL&FS who were also on the board of IFIN drew a commission and sitting fees on the basis of these fictitious profits. Members of the Coterie, abusing their position, connived and through the fraudulent *modus operandi* of delaying the date for classifying the defaulting borrowers as NPA and making provision for them with a view to keep IFIN and other Its group companies afloat.

23. Investigation revealed that members of the Coterie also connived to sanction loans to the tune of Rs.190 Crore to the Employee Welfare Trust which were used for

repayment of Loan taken to purchase shares of IL&FS&ISSL and Interest payment of previous loans, which was an abusive exercise of authority.

24. Through the abusive exercise of power, the coterie of R Parthasarthy(A2), Hari Sankaran(A3), Arun Saha(A4), Vibhav Kapoor(A5), Ramesh C Bawa(A7) and K Ramchand(A6) in adopting the fraudulent modus operandi, Ramesh C Bawa as the Managing Director and CEO of IFIN, who being at the helm of affairs, oversaw the implementation of these fraudulent modus operandi, Hari Sankaran as the Chairman of IFIN, Milind Patel(A8) as the approving authorities and Rajesh Kotian(A9), who actively assisted in the various abusive IFIN's group companies lending modus operandi, connived and advanced the funds of the IFIN to borrowers and its group entities by abusing their position which injured the interest of creditors of IFIN as well as IFIN. Wrongful loss has been caused to the creditors of IFIN as well as IFIN and amount lent to the defaulting entities could not be recovered and IFIN spiralled into a deeper financial crisis.

25. The above acts of the Coterie were known to the independent Directors A-19 to A-23 and other Directors including the Accused A-17 who was CFO of the IFIN and one of the of the person who process the loan applications. The accused A-17 was also ware of the above decisions being part of the Credit approval.

Loan Facilities extended to Siva group

26.C. Sivasankaran(A18) is a in the multiple kind of business activities. He was Chairman of the Siva Group of the Companies/the controlling will and mind of the Shiva Group of the Companies and his companies borrowed money from the IFIN on several instances. During the course of investigation, it was revealed that Sivasankaran had personal relationship with Ravi Parthsarathy (A2) and Hari Sankaran(A3).

27. Upon examination of email data of IL&FS it was found that C. Sivasankaran was arranging hospitality for Ravi, Vibhav Kapoor and Hari Sankaran including foreign travels, arranging private jets & helicopter ride, booking of resorts and arranging for interiors of their flats at Brussels amongst other. In-turn Ravi Parthsarthy, Vibhav Kapoor and Hari Sankaran were found to have facilitated/connived with Sivasankaran, by influencing the decision-making process in IFIN including the critical decisions for recovery and disbursement of loans and fees.
28. It is revealed that IL&FS Financial Services Limited had entered into 15 transaction of advancing loans to or investing in debenture of different Siva Group Companies. Out of the total 15 lending transactions, repayment of loans pertaining to only first four transactions were done.
29. It is further revealed that the primary security for the loans advanced, from Dec 2011 to Dec 2014, to Siva Group were the shares held by Siva group companies in Tata Teleservices Limited (TTSL) (an unlisted company). The said security which was valued at Rs 82.00 per share was carried over for subsequent fresh lending up till 2014. Keeping a constant quantum of shares without re-evaluating the value of such shares drastically reduced the security cover of such lending. Finally, RBI in its report observed that the value of shares of TTSL should be treated as nil and IFIN should provide provision for the total investment of TTSL.

In the year 2014 while lending to Siva India Commercial Traders Private Limited, an additional security in the form of stock of Emerald Stones valued at Rs. 59.62 Crores was taken. However, at the time of taking the security no physical examination, documentation related to the value, establishment of ownership, verification of premises where it is to be kept or proper security documentation were executed. IFIN placed complete reliance on a letter from the Chartered Accountant, appointed by the borrower. This was in blatant violation of the security

creation policy of IFIN, wherein it required proper hypothecation documentation to be created for taking security of such movable property.

- 30.** Investigation revealed that as on 31 March 2015, the aggregate exposure to Siva Group Companies stood at Approx. 182.45 Crore. The said exposure continued as loan, from March 2015 to Dec 2015, with no security cover as the so-called security of Emerald stock was existing only on paper without any physical verification. During Dec 2015, IFIN subscribed to 0.01% Optionally Convertible Debentures (OCD) to the extent of Rs. 190 Crore, effectively, interest free debentures. These debentures were unsecured.
- 31.** RBI in its successive inspection reports for financial years ending 31st March 2016 and 31st March 2017 have observed that the OCDs of Rs. 190 crores was used to fund the earlier loans given by IFIN to different SIVA Group entities. Further it was observed that the OCD investment is an unsecured investment for 5 years carrying a meager 0.01% interest. As such the valuation of the investment (based on break-up value method) was nil. Thus, 100% diminution in value of investments was recommended by the inspection.
- 32.** It is revealed that the new loans were given to Siva Group companies to facilitate repayment of existing loans which were in fact required to be classified as NPAs. Few Loans were closed pursuant to exercise of IFIN right over TTSL shares which were offered as security by Siva Group Companies. The shares had no value in the market. Few other loans were closed by repayment which was funded by IFIN by way of subscribing to the Obligations of the respective entities 'OCDs' issued by Siva Green Power Projects Limited. The fraudulent circuitous transactions among IFIN and Siva Group companies had aided to project rosy picture of financial statements and defraud the lenders of IFIN.

- 33.** In another transaction with Siva Group a MoU dated 19, November 2014 was signed between Hill County Properties Limited (an IL&FS Group entity – HCPL) and Chennai Properties and Investment Limited (“CPIL”), a Siva Group Company. According to the MoU, CPIL was to provide services to HCPL for development of its specified land parcels with a view to monetize the land bank for generating revenues from such land parcels and in consideration, CPIL was to be entitled for 20% of the net proceeds. Further, CPIL had conducted a preliminary analysis and had estimated to generate Rs 2,500 crore over a period of 5 years of which Rs 750 crore was expected to be generated within a period of six months i.e. upto 13 May 2015. Since CPIL could not generate Rs 750 crore revenue within a period of six months, the aforementioned clause was amended twice on 31 March 2016 and 31 March 2017 to extend the timelines till 31 March 2017 and 31 March 2018, respectively. It was also noticed that Siva group was benefited to the extent of Rs. 2.80 Crore under the above agreement. The agreement had not benefited HCPL for monetization of assets.
- 34.** Obligations of the respective entities under the OCD (i.e. Siva Green) as well the Put Option (i.e. SREPPL) agreements were guaranteed by Chennai Properties and Investments Pvt Ltd (CPIL). Accordingly, a Guarantee Agreement document was executed by CPIL on Dec 23, 2015 in favor of IFIN, wherein the obligations of both the above parties were guaranteed to the extent of Rs 300 crore cumulatively against the total dues of Rs 444 crores. CPIL proposed to honor its commitment under the Corporate Guarantee from the future receivables anticipated under the MOU executed between Hill County Properties Ltd (HCPL) and CPIL (Nov 19, 2014). As per the MOU, CPIL was to receive commission/fee of 20% of sales proceeds, resulting in revenue of Rs 500 crores. These cash flows were escrowed to IFIN and were eligible to receive 60% share of same (i.e. around Rs 300 crores).

When CPIL failed to generate the target revenue of Rs. 750 crores in the first six months of signing the agreement i.e. by 19th May 2015, instead of cancelling the MOU, IL&FS extended the contract for another year. However, it is seen that CPIL could not generate any revenue under the said MoU. But the said MoU was fraudulently utilized by IFIN to project visibility of cash flows to securitize and there by avoid provisioning/write-off.

35. It is further revealed that C. Sivasankaran was financially benefitted while purchasing two villas, which were sold by HCPL, it is seen that the villas were sold at a discounted price of Rs 5.00 Crore each to Utoo Cabs, an entity of SIVA group. Further over and above the discounted price, a Commission of 20% was to be paid to the CPIL on account of MOU between CPIL and HCP. By virtue of the MOU between CPIL and HCPL, It is found that Siva group was given Rs. 2.80 Crore in July 2017. However, as envisaged under the Securitization mechanism of the OCD of Rs 190.00 Crore the cash flows to the CPIL should have been utilized for payment of outstanding loans of IFIN. However, IFIN never recovered any such amounts from CPIL showing a poor credit administration and fraudulent non recovery of the loan.

36. During the investigations, it was found that C Sivasankaran was in a desperate need to settle his outstanding accounts with IFCI and release his Chennai land mortgage with IFCI. An amount of approximately Rs. 50 crore were due to recovery by IFIN from Siva. In such circumstances, it was not possible for an NBFC to lend to a defaulting borrower. Accordingly, with collusion of the management of the IL&FS a unique structure was created wherein IL&FS gave its own land parcels in HCPL for entering into a development rights agreement with a Sivasankaran entity by the name of Siva Shelters. This was done in spite of the fact that in the earlier agreement with Siva Shelter was unable to generate any revenue for IL&FS group. The direction for keeping the past

Exposures and the present securities as separate was issued by Hari Sankaran and vide email dated 11 September, 2017 wherein he had directed the officials of IFIN to create a structure in which the security was taken only for securitising the fresh disbursements and was not to be utilised for securitising the outstanding dues of approximately Rs. 450 crores. These directions were in blatant violation of prudential norms of an NBFC and against the established principles of securitizing all the outstanding dues by any lender. This email clearly brings out the connivance between Hari Sankaran and Sivasankaran wherein to please and for the various benefits derived from Siva Sankaran, Hari Sankaran is compromising the assets of the company and also is ready to give away the funds borrowed from the public to Sivasankaran. It is also seen from the email dated 11 September, 2017 that Hari Sankaran was aware of the stressed and outstanding dues of Sivasankaran. However, he overlooked the observations of RBI and auditors with regard to the overdue exposures of Sivasankaran. He instead directed the IFIN employees to not securitize the outstanding dues while entering into the fresh lending exercise.

- 37.** Upon examination of email data on IL&FS server, it is seen that whole of the transaction was structured in a manner which was suitable to Sivasankaran. The senior management of IFIN was directed to consummate the transaction in a manner which was agreeable to Sivasankaran which is evident from email dated 4 December, 2017 of Arun Saha written to Ramesh C Bawa to expedite the term sheet as Sivasankaran has been continuously reminding him. Further, vide e-mail dated 27 December, 2017, Hari Sankaran has asked the employees of IFIN not to start over again regarding the issues of security creation of the outstanding liabilities of Sivasankaran and continue with the fresh transactions without repeating the concerns raised earlier.

During the investigation it was found that Ravi Parthasarathy and Hari Sankaran were the two persons on whom Sivasankaran was having great influence and these two officials connived with C Sivasankaran and dominated the management of IFIN to conclude the above transaction with Sivasankaran which was against the interest of the IFIN. It was even observed from an email dated 1st February, 2018 by Ravi Parthasarathy to Sivasankaran that instead of protecting the interest of the company Ravi is found being apologetic to Sivasankaran for taking time for finalizing the loan transaction of Rs. 175 crores.

38. During the course of investigation statements of Milind Patel **(A8)**, Ramesh Bawa **(A7)**, Sujoy Das, P. Manikandan, Deepak Pareek **(A17)**, Maharudra Wagle was recorded under Section 217 of the Companies Act, 2013 which clearly established that the decision to lend Rs. 175 Crore to C. Sivasankaran was directed by Hari Sankaran **(A3)** along with Ravi Parthasarathy **(A2)**.

39. In another transaction, with collusion of the management, IFIN had been used by Sivasankaran to ensure that his outstanding loans due from Unitech group are paid back. In the month of April 2012, the accounts of Unitech group were stressed and the repayments from the group to IFIN were not happening, even though C Sivasankaran connived with management of IFIN and accordingly, IFIN sanctioned and disbursed a loan of Rs. 125 Crores to Unitech group which was used by Unitech group to repay the liabilities of SIVA Ventures.

Despite existence over dues from Unitech Group, additional loans of INR 125 crores were granted to Unitech Group just to assist them to clear their dues to C Sivasankaran (A-18) of approximately INR 80 crores and consecutively Siva to clear loans of IFIN. In the transaction, IFIN not only self-funded their advisory income of INR 8 crores but also granted additional loans of approximately INR 45 crores.

40. That connivance between C Sivasankar and IFIN officials is also proved from the mail dated 31/01/2012 in which C Sivasanakaran asked Ravi Parthsarthy to discuss the issue concerning Ackruti, Unitech and L&T which establishes that companies of Siva Groups were getting wrongful gains from IFIN and C Sivasanakaran with connivance of the top management injured the interest of the IFIN.
41. The statements of the various employees working in the companies of Siva Group were recorded making it clear that all the decisions were taken by Siva Sankaran and all the directions were taken from him. All the finance & business-related decisions were also to be taken only after the approval/concurrence/ consultation with C Sivasankaran.
42. It is clearly brought out in the investigation that the controlling will and mind of entities belonging to the Siva group (all the borrowers of IFIN) is C. Sivasankaran. All the key management persons and the directors of the Siva group of industries were accustomed to act on the directions of C Sivasankaran. From the investigations carried out as discussed in the foregoing para as it is established beyond doubt that all the commercial transactions entered into with the IL&FS group of entities especially with IFIN were discussed and decided by C Sivasankaran with the help of Hari Sankaran and Ravi Parthasarathy.
43. The above acts of the Coterie were known to the independent Directors A-19 to A-23 and other Directors including the Accused A-17 who was CFO of the IFIN and one of the of the person who process the loan applications. Further, these issues got before the Board from time to time as consequence of the RBI inspection report.

Role of Auditors

44. Investigation revealed that the auditor of IFIN (**A10-14**) despite having the knowledge of negative NOF, negative

CRAR, funding of defaulting borrowers through their group companies again and again for payment of interest and principal amounts, suppression of NPA, suppression of provisioning for NPA, non-write off of loss investments, recognizing of the income on services rendered to the group companies later written off, not verifying/cross-verifying end use of bank finance and NCDs despite the regulatory requirement of doing so failed to do the same at a time when funding the prohibited end uses such as lending to its group was on an increasing trend, taking the alibi of management representations. This had led to auditor conniving, colluding with Coterie to conceal material information/facts, and in fraudulently falsifying the books of accounts and thereby financial statements From FY 2013-14 to 2017-18, the auditor knowingly did not report the true state of affairs of the company, particularly negative NOF and negative CRAR, where had resulted in the causing loss to creditors of the company who had lent and invested in the NCDs.

45. Investigation revealed that the Audit Committee members **(A 15, 16, 4)** were aware of the stressed asset portfolio, the modus operandi used for granting loans to group companies of existing defaulting borrowers in order to prevent their being classified as NPA, non-receipt of the fees and income specially from the group entities, funding of the interest income, funding of Its groups entities etc. and the RBI Inspection Reports for the Financial Years during the Financial Years 2016-17 and 2017-18. They did not ensure adequate disclosure or reporting of the facts brought out in these reports based on explanations given by management. The committee connived with the management **(A2-A9)** and overlooked the numerous impairment indicators in contravention of the accounting standards and principals of prudence by agreeing with the decision of management to defer the provision of diminution in books of accounts. The incorrect

provisioning of the investments in half yearly financial statements were of great significance as such incorrect financial statements were being used by the rating agencies for various new instrument rating and surveillance rating. These particular financials were also used for borrowing from market, wherein, such incorrect financial were used to lure the investors investing the public money.

CHARGE NO. 2: VIOLATIONS ATTRACTING SECTION 36 R/W 447 OF COMPANIES ACT, 2013 AND SECTION 68 OF THE COMPANIES ACT, 1956

46. Investigation revealed that IFIN was raising funds by way of loans from banks and in the form of Non-Convertible Debentures (NCDs) and Commercial Papers (CPs) from market for its business purposes. The company, acting through A-4, A-5, A-7, A-8, A-9, A-15 and A-16 while applying for the loans and while issuing the NCDs and CPs, had deliberately concealed material facts pertaining to negative NOF and negative CRAR assessed by the RBI, the regulator of NBFCs, from time to time. The disclosure of the same is very critical for investment decisions by the investors/banks. The non-disclosure had resulted in causing loss to creditors of the company who had lent and investors who invested in the NCDs.
47. Further, IFIN devised various fraudulent modus operandi, including of circuitous transactions to fund the borrowers for interest and principal again and again, thereby, painting a rosy picture of the asset quality as loans of defaulting borrowers were fraudulently kept "standard" and not recognized as NPA over the years. This resulted in wrong, misleading picture of the state of affairs of the company in the financial statements, which were used to access the funds from market in the form of NCDs and CPs and Loans from Banks.

Regarding the aforesaid, the investigation revealed that the Board of Directors, in their various meetings delegated the Committee of Directors and/or Administrative Committee for executing inter alia all agreements for borrowing funds through various instruments, and also authorized Directors of the company to jointly and/or severally sign or execute documents to give effect to the resolution.

Therefore, the Board of Directors including authorized Directors A-4, A-5, A-7, A-8, A-9 are responsible for inducing the banks (sec 36(c)) and investors of NCDs and CPs (Sec 36(a)) to invest/lend money to the company by making statements (financial statements) which are false, deceptive and misleading and deliberately concealing material facts. The company had defaulted in repayment of loans and failed to honour the payment of matured NCDs/CPs on the due dates causing loss to the banks and investor of financial instruments (NCDs and CPs) of IFIN for FY 2013-14 to 2017-

CHARGE NO. 3: FAILURE IN DISCHARGING STATUTORY AUDITORS DUTIES UNDER SECTION 143 OF COMPANIES ACT, 2013 PUNISHABLE UNDER SECTION 147 OF COMPANIES ACT, 2013

48. Investigation revealed that auditors, along with their engagement team, of IFIN (**A 10-14, 24-30**) did not perform their duties diligently. The auditors, despite having the knowledge of funding of the defaulting borrowers for principal and interest payments, which was prejudicial to the interest of the company and its creditors, besides having awareness of the impact of the same on the financial statements, the auditor failed to report in the auditors' report for FY 2013-14 to 2017-18 (noncompliance of section 143(1)(a));

The loans which were transferred by mere book entry had resulted in considering the old loan as closed and new

loans didn't require provisioning etc., and this was an effort to postpone the provisioning, recognition of NPA etc., Hence, assignment of the same was prejudicial to the interest of the company. The auditors having knowledge of the same had not reported the same in the audit report (noncompliance of section 143(1)(b));

Udayan Sen(**A10**) and N Sampath Ganesh (**A12**) had stated about reliance on RBI Inspection Report for NPA matters, Review Report of Khandelwal Jain & Co, Chartered Accountants etc., availability of collateral and management representation on exit plan, rather than rather than stating whether they had obtained the details necessary for the purpose of their audit or not. The auditors had relied on the oral discussion of the company officials with RBI for reporting the NOF and CRAR as per the existing policy of the company, rather than RBI guidelines in FY 2017-18 and not disclosed this material departure from regulatory requirements and thus caused loss to the creditors of IFIN (Please refer to Negative Net Owned Funds in chapter 4 of this report) (noncompliance of section 143(3)(a));

By recognizing the interest income, which was funded by the IFIN itself, it had not followed AS 9 (Refer to section Audit of Revenue). As the company had not written of the loss investments it had violated the accounting standard 13. (Noncompliance of section 143(3)(e));

49. Investigation revealed that the auditors, along with their engagement team, had not followed the following auditing standards while auditing the financial statements of the company for FY 2014-15 to FY 2017-18 as under: -

- SA 500 Audit Evidence is dealt in the section "Reliance On Management Appointed Professionals" and "Audit Evidence and forming an opinion on true and fair view of Financial statements" above.
- SA 240 (Revised) - 'The Auditor's Responsibility to consider Fraud and Error in an Audit of Financial Statements' is dealt in the "Audit of Lending"

- SA 520 (Revised) - Analytical Procedures is dealt in the section “Analytical procedures” under “Audit of Lending by DHS for last 10 FYs” and “Auditing of Lending by BSR for FY 2017-18”.
- SA 315 - Identifying and Assessing the Risk of Material Misstatement through Understanding the Entity and Its Environment, is dealt in the section “Assessing the Environment of the entity” under “Audit of Lending by DHS for last 10 FYs” and “Auditing of Lending by BSR for FY 2017-18”.
- SA 250 - Consideration of Laws and Regulations in an Audit of Financial Statements is dealt in the section “Failure To Consider The Laws And Regulations Of The Auditee”.
- SA 570 Going Concern is dealt in the section “Auditors Responsibility under Standards of Auditing in Auditing in the Light of RBI Inspection”

50. It is therefore observed that above-mentioned auditors, along with their engagement team, did not use professional skepticism to ensure true & fair disclosure of state of affairs of the companies. They in-fact, colluded with officials of the companies in order to conceal their fraudulent activities and thus, they had failed to perform their duties as required from them u/s 143 of the Companies Act, 2013.

CHARGE NO. 4: LIABILITY U/S 211 R/W SECTION 628 OF THE COMPANIES ACT, 1956 R/W 477A OF IPC, 227/233 R/W SECTION 628 OF COMPANIES ACT, 1956 AND U/S 129 R/W SECTION 448 OF THE COMPANIES ACT, 2013 AS BALANCE SHEETS AND PROFIT AND LOSS ACCOUNTS OF IFIN DO NOT GIVE TRUE AND FAIR VIEW OF AFFAIRS: -

- 51.** Investigation revealed that the financial statements prepared and filed by the company/IFIN were not giving a true and fair view of the state of affairs of the company, as the Financial statements for FY 2011-12 to 2017-18 were not in compliance with the applicable accounting standards notified under Section 133 of the Companies Act 2013 and under Section 211 of the Companies Act 1956.
- 52.** Accounting Standard 9 (AS -9) requires when recognition of revenue is postponed due to the effect of uncertainties (in case of NBFCs recognising an account as NPA), postponing of the recognition of revenue is considered proper recognition. However, the financial statements were misstated as the company was recognising the interest income fraudulently funded by them. The income recognized is in contravention to the Accounting Standard 9.
- 53.** As per AS 1 – Disclosure of Accounting Policies, Para 16 the primary consideration in the selection of accounting policies by an enterprise is that the financial statements prepared and presented on the basis of such accounting policies should represent a true and fair view of the state of affairs of the enterprise as at the balance sheet date and of the profit or loss for the period ended on that date. However, the fraudulent new loans to defaulting borrowers were accounted as new loans and not recognized as NPA considering the legal form of the transaction of new loans to defaulting borrowers, thereby defaulted in compliance to Accounting Standard 1.
- 54.** Further, the investments (TTSL shares and OCD in Siva Green etc.) identified by the regulator (RBI) in its Inspection Report were not written off as loss investments. The management had entered to different fraudulent derivative contracts for not writing off the value of investments. Financial statements were falsified to the

extent of investment of TTSL Shares and OCDs in Siva Green in 2016-17 & 2017-18, thereby defaulted in compliance to Accounting Standard 13.

Disclosure of CRAR

55. IFIN disclosed CRAR as per the company devised policy and not as per RBI directions on the mater. RBI had, as part of inspection calculated and conveyed the CRAR in accordance with the directions. For the year 2016-17, IFIN neither recalculated nor disclosed the full details on the discrepancies, which was a material information.
56. The management had not disclosed the CRAR as assessed by the RBI in the disclosures forming part of financial statements. For FY 2017-18, the CRAR had been disclosed as per the existing practice norms despite the regulator's instruction on calculation of NOF and CRAR. The financial statements don't show true and fair view as the CRAR (a material fact/information) represented in the financial statements is misstated.
57. Investigation team also found instances of funding the overdue loans to the financial year 2013-14 which was governed by the provisions of the Companies Act, 1956. This included a loan of Rs.60 Crore Rs.15 Crore to Parsvnath Group as fresh loans in the month of August, 2010 and March, 2013 which were used for the purpose of payment of previous loan amount. Similarly, in March, 2013 loan amounts of Rs.240 Crore sanctioned to Grevek Investment & Finance Pvt Ltd (GIFPL) and Rs.230 Crore to SKIL Infrastructure Ltd were used for the purpose of the payments of existing loan.
58. The signatory of these accounts including statutory auditors of the IFIN have suppressed the information of various loans for which provisioning should have been made in the financial statements. They knowingly avoided these provisioning in the books of accounts of the Company which led to fraudulently inflate the profits of the Company which presented a rosy picture.

The above financial statements were also audited by the Statutory Auditors who performs the important task of providing an assurance to the outside investors/stakeholders on its financial reporting. He is required to check the accounting records and all other relevant sources of data and information to ensure that the financial statements of a company give a true and fair picture.

59. On account of the critical function performed by the auditors, safeguards to ensure their independence are embedded in the Companies Act. The Statutory auditors are independent from the management of the company and are employed by the shareholders and not by the directors. However, in case in hand the statutory auditors also failed to discharge their duties and knowingly signed false statements.

CHARGE NO. 5: LIABILITY U/S 184 OF THE COMPANIES ACT, 2013 AS RAMESH C BAWA DIRECTOR OF IFIN FAILED TO DISCLOSE HIS INTEREST-

60. Ramesh C Bawa (A7) a director in IFIN had not disclosed his interest in 'AAA Info Systems Private Limited' and 'AAAB Infrastructure Private Limited', in which his wife and daughter are directors. Ramesh C Bawa was also a shareholder in the said companies but he had not disclosed his interest in the said companies in Form MBP - 1 submitted by him to the Board of Directors of the Company.

61. Ramesh C Bawa was aware of the manner of filing MBP 1 as he was reporting his interest in 20 different entities. The act of not disclosing the names of the companies where he had interest in the companies was deliberate and intentional misstatement in a form required to be submitted under Section 184(1) of the Companies Act, 2013. It is pertinent to mention here that AAAB Infrastructure Private Limited had entered into

transactions of approximately Rs. 12.00 Crore with Unitech Limited one of the defaulting borrowers of IFIN.

62. That it is submitted that the accused persons herein above are charged with/complained of various offences which are punishable with more than 3 years of imprisonment and therefore the present complaint is well within the period of limitation as prescribed U/s 468 of Cr.P.C, 1973.

63. That the complainant further submits that the list of documents and the witnesses have been annexed with the Complaint also, however, the complainant craves the liberty of Hon'ble Court to refer and rely upon additional list of documents and witnesses as necessary, during the course of trial.

PRAYER:

In view of the aforesaid submission, the Complainant prays as under: -

(a) This Hon'ble Court be pleased to take cognizance on the present complaint and accordingly issue process against the abovementioned accused persons as arrayed in the memo of the Accused No.1-30 to stand for trial for the contraventions and violations mentioned above.

(b) This Hon'ble Court would be gracious, while convicting the accused persons, to award cost of the proceedings to the complainant as provided u/s 357 of the Cr.P.C. r/w Section 626 of the Companies Act, 1956 r/w section 446 of the Companies Act, 2013.

(c) To award the cost of expenses incurred by the Office of the Complainant towards investigation may please be awarded.

- (d) Pass necessary directions u/s 621 (1A) of the Companies Act, 1956 r/w 439(3) of the Companies Act of 2013 exempting the complainant from his personal attendance in court unless specially required and kindly be allowed to appear through the pleader, and
- (e) Pass any further order/s which this Hon'ble Court may deem fit and proper in the circumstances of the present case.

Date: 30/05/2019
Place: Mumbai

Complainant



Sh. Munish Garg,
Assistant Director & Investigating Officer,
7th Floor, Fountain Telecom Building,
MG- Road, Mumbai

Through:

Hiten Venegaonkar
(Senior Central Govt. Counsel)



(Pradeep Yadav)
Prosecutor, SFIO