

*Dipak Misra*  
*Former Chief Justice of India*

Confidential

Page 1

January 8, 2020

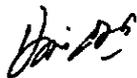
Ms. Saman Ahsan,  
Partner,  
Khaitan & Co.,  
Advocates,  
New Delhi.

Sub : In Re : Case for Opinion on the legal impact of GT Forensic Report  
on the Querist

Dear Ms. Ahsan,

In response to your queries dated 07.01.2020, the opinion pertaining to the impact of GT Forensic Report on the Querist, Reliance Home Finance Limited (RHFL), is enclosed herewith.

Regards,



Dipak Misra  
Former Chief Justice of India

Encl : Legal Opinion

**LEGAL OPINION**

**In Re : Case for Opinion on the legal impact of GT Forensic Report  
on the Querist**

Reliance Home Finance Limited (RHFL)

.... Querist

**Queries :**

The Querist herein, Reliance Home Finance Limited (RHFL), has posed the following queries for consideration :

- A) Whether the observations and overall conclusions set forth in the GT Forensic Report constitute commission of 'fraud' as contemplated under the RBI Directions ?
- B) Whether the observations and overall conclusions made in the GT Forensic Report qualify for filing of a Fraud Monitoring Return as provided under the RBI Directions ?
- C) In absence of any observations or conclusions about fraud in RHFL account under the GT Forensic Report, what would the appropriate course of action for the banks ?

1. **The Factual Exposition :**

- 1.1 To deal with the queries put forth by the Querist, it is necessary to state the factual score and appreciate the same in proper perspective.
- 1.2 The Querist, a public company, is registered as a housing finance company with the National Housing Bank (“NHB”) under the National Housing Bank Act, 1987. It is engaged in the business of extending home loans, loans against property and construction finance.
- 1.3 The Querist company had taken loans from banks and financial institutions in the ordinary course of its business. After certain adverse events in the financial services sector such as IL&FS episode and the NBFCs crisis, all the categories of lenders in India, including Banks, Mutual Funds, etc. had put an almost complete freeze on additional lending to housing finance companies (“HFC’s”) and instead have been insisting upon reduction of existing borrowing only. The same have had a severe impact on the financial flexibility of all the HFCs in the country including the Querist company. Resultantly, there is an adverse impact on the Querist company’s ability to meet its debt servicing obligations.
- 1.4 In view of the above situation, the Querist company has been in negotiation with its lenders to arrive at a debt resolution plan and, accordingly, an Inter-creditor Agreement (“ICA”) has been signed by most of its lenders in terms of the RBI Circular dated 07.06.2019

on “Prudential Framework for Resolution of Stressed Assets” to arrive at a debt resolution plan for the Querist company. The process of restructuring of the assets of the Querist company is underway whereby the lenders are seeking to restructure the debt in the interest of all the stakeholders.

1.5 Pursuant to the same, Bank of Baroda (“BOB”), the Lead Bank acting on behalf of all signatories to ICA, has appointed M/s Grant Thornton India LLP (“GT”) vide engagement letter dated 20<sup>th</sup> August, 2019 for conducting the forensic audit of the Querist company. The scope of work of GT, *inter alia*, included undertaking of the following :

- (a) identifying/ascertaining the actual end use of funds disbursed by the Team Lenders and other working funds including CPs and any other short term funds received from various sources ;
- (b) to ascertain whether there has been any misrepresentation to the banks while carrying necessary due diligence ;
- (c) investigation of transactions involving income and expenditure, which exceeded the normal levels ;
- (d) to examine diversion/siphoning of lender’s funds, if any, conducted by the promoters/employees/associates and to gather necessary evidence, modus operandi, motive, etc.

- (e) to ascertain the money trail of all major transactions of investments made, unsecured loans given and major collections from loans and receivables ;
- (f) establish whether any diversion of funds/embezzlement/siphoning of funds has taken place looking into the trail of money borrowed out of bank's funds ;
- (g) identification of instances where utilization is different from stated purpose as per the facility agreements/non-compliant with the sanction terms/inconsistent with the declaration and certifications provided ;
- (h) to pinpoint the real weakness or mala fide operations that the borrower may be engaged in without knowledge of the bank ;
- (i) to examine whether accounting standards have been observed and whether there has been falsification of accounts where there are fraudulent transactions which are mere book entries and not backed by any genuine document ;
- (j) to view/judge wherever frauds, if any, are observed, the modus operandi, the motive of the suspect and opportunity to commit fraud, whether there is any collusion and physical and documentary evidences to substantiate it, whether there was any attempt to destroy the evidence, etc.

1.6 While the completion of such forensic audit was pending, 3 lenders out of more than 20 lenders had 'red flagged' the Querist's account with them, claiming existence of circumstances suggesting Early

Warning Signals enumerated in the RBI Circular dated 01.07.2016 on “Master Direction on Frauds- Classification and Reporting by commercial banks and selected FIs” (“RBI Directions”).

1.7 At this juncture, it is seemly to state that the concerned RBI Directions, in paragraph 2.2.1, deal with classification of frauds. The same shall be adverted to at a later stage.

1.8 GT conducted the forensic audit of the Querist company during the period of August to December, 2019. It had conducted in-depth discussions with key representatives of the Querist company for obtaining details relating to the Group as well as its operations. The final report (“GT Forensic Report”) was issued by GT and was shared by Bank of Baroda (BOB) with the Querist company on 04.01.2020. The GT Forensic Report mainly contains the following aspects :

- 
- (a) Transactions with Potentially Indirectly Linked Entities
  - (b) Potential Regulatory Anomalies
  - (c) Loan Disbursement to Valuecorp (exposure to RCom) written off
  - (d) Anomalies in the credit appraisal process
  - (e) Loan advanced to other entities
  - (f) Anomalies identified during loan file review

1.9 The key observation in the GT Forensic Report is as regards loans given to alleged potential linked entities, i.e., group exposure. It is worthy to note that the said group exposure is duly secured by way of corporate guarantee of Reliance Infrastructure Limited for an amount of Rs.2,905 crores (Indian Rupees Two Thousand Nine Hundred and Five Crores) and the same forms part of the Draft Resolution Plan submitted by the Company to Lenders on 05.12.2019. At this stage, it is apposite to refer to Page 72 of the Annual Report for 2018-19 which is extracted below :

*“During the Financial Year, the Company had advanced loans under the ‘General Purpose Corporate Loan’ product to certain bodies corporate including some of the group companies. All the lending transactions undertaken by the Company are in the ordinary course of business, the terms of which are at arms’ length basis and the same do not constitute transactions with related parties. However, the Company’s borrowers in some cases have undertaken onward lending transactions and it is noticed that the end use of the borrowings from the Company included borrowings by or repayment of financial obligations to some of the group companies.”*

1.10 In relation to the alleged violation of the regulatory norms, the Regulator, NHB, has taken the following action :

- (a) NHB, vide its letter dated 07.08.2019, had advised the Querist company to bring down its non-housing loan portfolio to below 50% of the total loans (housing plus non- housing). The

Querist company, vide its letter dated 16.08.2019, has sought time from the Regulator for compliance of the same.

- (b) NHB, vide its letter dated 22.10.2019, had imposed a nominal penalty of Rs.45,000/- (Indian Rupees Forty Five Thousand) for alleged breach of the regulatory norms which was paid by the Querist company.

1.11 While some of the lender banks of the Querist company had insisted on red flagging the Querist's account in accordance with the RBI Directions alleging suspicion of fraudulent activity, the entire GT Forensic Report neither indicates nor concludes the commission of any fraud by the Querist company. It does not even use the word 'misappropriation', 'siphoning' or 'diversion of funds'. The concept of fraud is not remotely attracted and the Report absolutely correctly does not use so.

1.12 Apart from the Report, a similar confirmation of "compliance of application of term loans' and 'no fraud'" is also mentioned in the audit reports of the statutory auditors for the previous two FYs 2016-17 and 2017-18. Be it noted, there were three distinct statutory auditors for all the three years, namely, M/s Chaturvedi & Shah for FY 2016-17, M/s Price Waterhouse & Co Chartered Accountants LLP for FY 2017-18 and M/s Dhiraj & Dheeraj for FY 2018-19 and all the three firms have consistently reported the above conclusions.

1.13 In this factual backdrop, the aforementioned queries have been posed to be answered.

2. **Analysis and Reasoning :**

2.1 The RBI Directions have been issued in public interest in exercise of the powers conferred by Section 35A of the Banking Regulation Act, 1949, with a view for providing a framework to banks, enabling them to detect and report frauds early and take timely consequent actions such as reporting to the Investigative agencies so that the entities or persons engaged in fraud or deceit are brought to book in quite promptitude, examining staff accountability and for effective fraud risk management. These directions also aim to enable faster dissemination of information by the RBI to banks on the details of frauds, unscrupulous borrowers and related parties based on banks' reporting so that necessary safeguards/preventive measures by way of appropriate procedures and internal checks may be introduced and caution exercised while dealing with such parties by banks. Further, the Banks are required to send the Fraud Monitoring Returns to RBI. In order to have uniformity of such reporting, the RBI Directions have already classified the 'frauds' on the basis of the provisions of the Indian Penal Code. Be it noted, a constant and consistent guideline and regulatory framework brings certainty and the concerned authorities and the entities work in a



definite and a guided manner. The objectives, needless to say, achieve their purpose.

2.2 The RBI Directions provide for new framework for dealing with loan frauds. The objective of the framework is to direct the focus of banks on the aspects relating to prevention, early detection, prompt reporting to the RBI (for system level aggregation, monitoring & dissemination) and the investigative agencies (for instituting criminal proceedings against the fraudulent borrowers) and timely initiation of the staff accountability proceedings (for determining negligence or connivance, if any) while ensuring that the normal conduct of business of the banks and their risk taking ability is not adversely impacted and no new and onerous responsibilities are placed on the banks. In order to achieve this objective, the framework has stipulated timelines with the action incumbent on a bank. The timelines/stage wise actions in the loan life-cycle are expected to compress the total time taken by a bank to identify a fraud and aid more effective action by the law enforcement agencies. The early detection of fraud and the necessary corrective action are important to reduce the quantum of loss which the continuance of the fraud may entail.

2.3 The RBI Directions also provide for early warning signals and red flagging of loan accounts. A Red Flagged Account (“RFA”) is one in which a suspicion of fraudulent activity is thrown up by the

presence of one or more Early Warning Signals (“EWS”). These signals in a loan account should immediately put the bank on alert regarding a weakness or wrongdoing which may ultimately turn out to be fraudulent. The suspicion may lead to detailed investigation into an RFA. Be it noted, ‘red-flagging’ an account does not mean that the banks or consortium of banks have concluded about the existence of fraud. An RFA may be subjected to forensic audit to establish whether there exists a fraud. If it is concluded that actual fraud has been committed under an RFA, the RBI Directions prescribe as to what further measures are required to be adopted by the lender banks for initiating appropriate proceedings against the borrower and report the existence of fraud to RBI. The banks are obligated to continue to monitor these RFAs and update the Central Fraud Registry of RBI.

- 2.4 As per the RBI Directions, within 15 days from the conclusion of the forensic audit, the Joint Lenders Forum is required to reconvene and decide the status of RFA as to whether such status should be changed to Fraud. For doing the same, the findings of the Forensic Report would be the most vital. It would be apposite to appreciate the Forensic Report in depth to determine whether the offence of fraud or any class of fraud is observed or concluded by such Report. Be it noted, if such conclusion is drawn, it has to be well founded on empirical evidence. The RBI Directions would also expect the banks and the forensic auditors to conduct themselves responsibly and not

form opinions on the basis of assumptions, presumptions, suspicions, surmises or conjectures.

2.5 At this juncture, it is profitable to advert to the definition of 'Fraud'. In general, it refers to a wrongful or criminal deception practised which is intended to result in financial or personal gain to oneself and a financial or personal loss to the other. 'Fraud' is an act or course of deception, an intentional concealment, omission, or perversion of truth, to :

- (a) Gain unlawful or unfair advantage,
- (b) Induce another to part with some valuable item or surrender a legal right, or
- (c) Inflict injury in some manner.

It is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss.

2.6 RBI Directions have classified 'frauds' mainly based on the provisions of the Indian Penal Code. The term 'Fraud' is not defined in the Indian Penal Code *per se*, but Section 25 of IPC defines as to what amounts to 'fraudulently'. As per the definition, fraudulently refers – A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. Thus, fraud does not involve a mere act or omission that results in a gain for one party or

a loss to another unless it is proved that the purported act or omission originated from a deliberate motive to deceive.

2.7 Implications of fraud are found in certain provisions of IPC. They are : Section 421 (Fraudulent removal or concealment of property to prevent distribution among creditors), Section 422 (Fraudulently preventing debt being available for creditors), Section 423 (Fraudulent execution of deed of transfer containing false statement of consideration) and Section 424 (Fraudulent removal or concealment of property).

2.8 On the basis of various illustrative offences above, and the established Indian jurisprudence, one of the essential conditions to be fulfilled for any action or omission to be termed as fraud is that the purported act of deceit must be intentional, deliberate and calculated.

2.9 At this juncture, it is seemly to advert to the RBI Directions on "Classification and Reporting of Frauds". RBI Directions provides for a framework to banks to enable them to detect, investigate and report frauds cases promptly as well as accurate reporting to appropriate regulatory and law enforcement authorities including RBI. It focuses on the aspects relating to early detection, prompt reporting to the RBI and the investigative agencies (for instituting criminal proceedings against the fraudulent borrowers) and timely

initiation of the staff accountability proceedings (for determining negligence or connivance, if any). That apart, it deals with framework relating to prevention, and measures to ensure necessary corrective action to reduce the quantum of loss which the continuance of fraud may entail. Paragraph 2.2.1 of the RBI Directions reads as follows :

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

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

2.10 RBI Directions has structured the mechanism of EWS and RFA.

 RFA is where a suspicion of fraudulent activity is thrown up by the presence of one or more Early Warning Signals which shall be used as a trigger to launch a detailed investigation into an RFA. It is not limpid as to which of the events in the Querist company have prompted only some of the consortium banks, and not all the lender banks to red flag the Querist's account.

2.11 Having analysed fraud in a manner that is in accord with the concept of fraud in IPC and the definitions postulated in the RBI Circular, it is seemly to refer to the authority in ***Dr. S. Dutt v. State of Uttar Pradesh***<sup>1</sup>. In the said case, the Supreme Court has opined :

*“.....it may be said that a mere acting to one's discomfort or discomfiture would not suffice. For the present it is sufficient to say that the words “with intent to defraud” in the section indicate not a bare intent to deceive but an intent to cause a person to act or omit to act, as a result of deception played upon him, to his disadvantage. This is the most extensive meaning that may be given to the expression “with intent to defraud” in our Penal Code and the words “but not otherwise” clearly show that the words “intent to defraud” are not synonymous with the words “intent to deceive” and require some action resulting in some disadvantage which but for the deception, the person deceived would have avoided.”*

2.12 In ***Gowrishankar v. Joshi Amba Shankar Family Trust***<sup>2</sup>, the Court ruled that the suppression of a material document would also amount to fraud on the court.

2.13 Thus, for successful prosecution of the penal offence of fraud, the twin elements of ‘intent to defraud’ of the offender must exist, i.e.—

---

<sup>1</sup> AIR 1966 SC 523

<sup>2</sup> 1996 AIR SCW 2684 : (1996) 3 SCC 310

- (a) An intent to deceive another; and
- (b) An intent to cause, by that deception, injury to some person.

2.14 The essential elements of fraud are :

- (a) False and wilful representation or assertion;
- (b) Perpetrator of Representation;
- (c) Intention to deceive;
- (d) Representation must relate to a fact;
- (e) Active concealment of facts;
- (f) Promise made without intention of performing it;
- (g) Representation must have actually deceived the other party;
- (h) Any other act fitted to deceive;
- (i) Any such Act or omission that the law specially declares as void;  
and
- (j) Wrongful Loss and Wrongful Gain is Immaterial.

2.15 At this stage, it is fruitful to refer to Section 421 of the IPC. It reads thus :



*“Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be property according to law among his creditors or the creditors of any other person shall be punished with*

*imprisonment of either description for a term which may extend to two years, or with fine, or with both."*

2.16 It is apposite to note that the observations in the GT Forensic Report has, *inter alia*, highlighted issues of regulatory anomalies in complying with the requirements of the Master Circular – Housing Finance Companies (NHB) Directions, 2010. However, the GT Forensic Report has not indicated absolute non-compliance with the same. Similarly, granting of loans to potential indirectly linked entities does not, *per se*, amount to or is conclusive of fraud as outlined in the RBI Directions. That apart, the observations in the GT Forensic Report do not remotely indicate the presence of any of the essential elements of fraud as listed above.

2.17 In ***Ramautar Choukhany v. Hari Ram Todi and Ors.***<sup>3</sup>, the High Court of Gauhati had held that in order to prove an offence under Section 421 of the IPC, the prosecution must show :

- 
- (a) that the accused removed, concealed or delivered the property or that he transferred it or caused it to be transferred to someone;
  - (b) that such transfer was without adequate consideration;
  - (c) that the accused thereby intended to prevent, or knew that he was thereby likely to prevent the distribution of that property

---

<sup>3</sup> 1982 Cri LJ 2266

according to law among his creditors or creditors of another person;

(d) that he acted dishonestly and fraudulently.

On a studied scrutiny of the aforesaid ingredients and the observations highlighted in the GT Forensic Report, it is luminescent that none of the ingredients that are necessary to prove fraud on the part of the Querist company are established.

2.18 In *Navinchandra Vishnuprasad Shah v. State of Gujarat*<sup>4</sup>, the High Court of Gujarat has held that for the offence of fraud, an offender must deceive, such deception must result into fraudulent or dishonest inducement and there must be a consequent delivery of a property or a consent in favour of an offender to retain such property or an inducement to the person so deceived to omit to do or to do a thing favourable to an offender thereby exposing the person deceived to a loss of damage or harm to his body, mind, reputation or property, etc.

2.19 To appreciate the contents of Section 420 of the IPC, reference to Section 415 of the IPC is necessary as it lays down the definition of cheating as contemplated in Section 420 of the IPC. The person must dishonestly or fraudulently induce the complainant to deliver

---

<sup>4</sup> Cri GJ 1241/2013

any property and the person should intentionally induce the complainant to do or omit to do a thing. Thus, guilty intention is an essential ingredient of the offence of cheating. There is no material in the GT Forensic Report to show dishonest or fraudulent removal or concealment against the Querist company which attracts the ingredients/essential elements of fraud.

2.20 While the initiation of the process of classifying a loan account can be on the basis of mere suspicion, the RBI Directions mandate a keener scrutiny into the specific facts and circumstances of the RFA by conducting a forensic audit. The purpose of the same ought to be to validate or negate the suspicion raised among the lenders. It is for this reason that the forensic audit report should reveal specific facts that would demonstrate existence of the essential ingredient of fraud. Only if the forensic report brings forth such material on record, the banks or the consortium lenders would be within their rights to conclude the existence of fraud. In the absence of any specific evidence being recorded by the forensic report, the Banks cannot assume such existence. The necessity of this evidence is also fortified by the provisions of the RBI Directions which stipulates the obligation on the Banks to take initiative and primary responsibility to prosecute the fraudsters by reporting to the investigating authorities.



2.21 Thus analysed, the reporting banks are obligated to ensure that they have all relevant facts and adequate and appropriate evidence (which can be proved beyond reasonable doubt). On receipt of the forensic report, the Banks are required to act in a non-arbitrary and absolutely reasonable manner and for the said purpose, there has to be condign appreciation of the essential attributes or essential features of fraud. Inappropriate deliberation is bound to invite the frown of arbitrariness and make the decision wholly vulnerable.

2.22 Be it noted, the GT Forensic Report has made certain provision which we have already indicated hereinbefore.

2.23 While the GT Forensic Report has made the above observations, it is crystal clear that the GT Forensic Report does not conclude the existence of a fraud but it makes a qualitative statement about the manner in which certain business practices have been carried out by the Querist company. The GT Forensic Report fails to pinpoint any particular breach or violation of a law or regulation. That apart, it is conspicuously silent on the intent of the management, that is, whether the alleged lapses or irregularities were intentional. The GT Forensic Report, thus, omits to mention the most crucial test of establishment of fraud, i.e., whether the alleged acts or omissions were intentional, deliberate or calculated to deceive.



2.24 I have carefully scrutinized and appreciated the Audit Report for the Querist, RHFL, for FY which ended on 31.03.2019. It states as follows :

*“..The Company did not raise any money by way of initial public offer or further public offer (including debt instruments) during the year. In our opinion and according to the information and explanation provided to us, the money raised by way of term loans during the year generally have been applied for the purposes for which they were obtained.*

*“During the course of our examination of the books and records of Company carried out in accordance with the generally accepted auditing practice in India, and according to the information and explanation given to us by the management we have neither came across any instance of fraud by the Company or any fraud on the Company by its officer or employee noticed or reported during the year nor have we been informed of any such instance by the management except a case of fraud on the Company for commercial purchase loan for an identified property amounting to Rs 2.04 Crore which was identified by management and reported to the National Housing Bank (NHB) and the said amount was written off by the Company in the statement of profit and loss of the year (Refer Note 53 of Ind AS Financial Statements). We also draw attention to Note 54 of Ind AS Financial Statements.”*

**[Emphasis supplied]**

 As mentioned earlier, the aforesaid observations are also set out in the reports of the statutory auditors for the financial years 2016-17 and 2017-18. Interestingly, these remarks and audit observations are

not contradicted by the GT Forensic Report. This is a significant aspect since the scope of the forensic audit is expected to be much invasive as compared to the statutory audit.

2.25 On a close analysis of the Report, it is perceptible that GT, in its Forensic Report, contains no finding suggesting any fraud with specific reference to the following : (i) there has been no finding as regards any misrepresentation to the banks ; (ii) there has been no finding as regards diversion/siphoning of lender's funds by the promoters/employees/associates, including any evidence, modus operandi, motive suggesting the same ; (iii) there has been no finding as regards any diversion of funds/embezzlement/siphoning of funds taking place looking into the trail of money borrowed out of bank's funds ; (iv) there has been no finding as regards identification of instances where utilization is different from the stated purpose as per the facility agreements/non-compliant with the sanction terms/inconsistent with the declaration and certifications provided ; (v) GT Forensic Report does not pinpoint mala fide operations that the borrower may have engaged in without knowledge of the bank ; (vi) there has been no finding as regards any violation of the accounting standards or any instance of falsification of accounts, where there are fraudulent transactions which are mere book entries and not backed by any genuine document ; (vii) there has been no observation or finding as regards any fraud or its modus operandi, motive of the suspect or



opportunity to commit fraud. The Report contains no observation as regards any collusion or physical and documentary evidences to substantiate the same or any attempt to destroy the evidence.

2.26 GT has, thus, concluded that there was no instance of fraud, diversion of funds, siphoning, embezzlement, misrepresentation to banks, mala fide transactions, falsification of accounts, motive (to commit fraud), collusion or attempt to destroy evidence by the Querist (RHFL). Hence, the Querist (RHFL) was in compliance with the accounting standards.

2.27 On a studied scrutiny of the response issued by the Querist company to BOB in respect of the contents of the draft GT Forensic Audit Report and the Annual Report for the year ended 31.03.2019, it is evincible that the Querist company has furnished details of the entire fund flow of utilization of loans by the borrower entities. This transparent disclosure virtually eliminates any allegation of misappropriation, diversion of funds or criminal breach of trust. From the Querist's response to the draft GT Forensic Audit Report read with the final GT Forensic Report, it is clear as day that the Querist has furnished full details of loans given including its end use to GT, evidencing that such end-use was for debt servicing to banks and lenders.



2.28 Thus, the GT Forensic Report does not contain any allegation or evidence of fraud as contemplated under the RBI Directions. The aforesaid observations in the GT Forensic Report neither amount to fraud as outlined in paragraph 2.2.1 of the RBI Directions nor suggest any wrongdoing in the loan accounts which may turn out to be fraudulent.

2.29 It is pertinent to note that the RBI Directions aims to enable faster dissemination of information by the RBI to banks on the details of frauds, unscrupulous borrowers and related parties based on banks' reporting so that necessary safeguards/preventive measures by way of appropriate procedures and internal checks may be introduced and caution exercised while dealing with such parties by banks. It states that the banks shall frame internal policy for fraud risk management and fraud investigation function. The banks with the approval of their respective boards are empowered to set up dedicated organisational set up and operating processes. Further, they are required to furnish the Fraud Monitoring Returns through the XBRL system in individual fraud cases, irrespective of the amount involved, to RBI within three weeks from the date of detection and ensure that the data furnished are complete/accurate and up-to-date.

 2.30 The reporting and setting the criminal investigation mechanism in motion can be triggered only on the foundation of relevant facts. In

the present case, the GT Forensic Report does not disclose the existence of any fraud. Be it noted, the GT Forensic Report indirectly confirms the conclusions of the statutory auditors of the Querist company, i.e., absence of fraud.

2.31 The RBI Directions deal with closure of fraud cases but do not provide for measures wherein fraud is not found or observed during a forensic audit. It is, however, natural that while some of the banks may have raised the suspicion of fraudulent activity and red-flagged the Querist's account, such red-flagging status needs to be changed by dropping the Querist company from RFA status. I have been intimated that the Querist company is already negotiating for an overall restructuring of its loans and proposed a resolution plan. It would be in the interest of the banks and secured lenders to proceed to sign and implement an inter-creditor agreement and consider the proposed resolution plan with a positive mindset.

2.32 In the obtaining factual matrix, needless to say, the consortium of banks are required to continue the monitoring of such accounts on an ongoing basis. The banks should take the GT Forensic Report on record and proceed to close the current procedures initiated under Chapter VIII of the RBI Directions. Any other course of action, in my view, would be contrary to the letter and spirit of the RBI Directions and amount to complete arbitrary action which the law does not countenance.



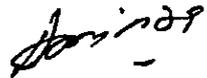
**3. Answers to the Queries :**

3.1 In view of the foregoing analysis and reasoning, the queries are answered thus :

- A) The observations and overall conclusions set forth in the GT Forensic Report do not constitute commission of 'fraud' as contemplated under the RBI Directions.
- B) As the observations and overall conclusions made in the GT Forensic Report do not constitute commission of 'fraud', filing of a Fraud Monitoring Return is not required.
- C) The banks are required to take the GT Forensic Report on record and proceed to close the current procedures initiated under Chapter VIII of the RBI Directions.

This legal opinion is based on the facts as presented to me. This opinion is not meant to be used in any court of law or before any tribunal or any quasi-judicial authority.

Dated : 08.01.2020

  
Dipak Misra

Former Chief Justice of India