

CC No. 299/2019 (Old CC No. CBI/33/2017)
RC No. 219 2014 (E) 0017
Branch: CBI, EO-I, New Delhi
CBI Vs. M/s SKS Ispat Ltd & Others
U/s 120-B r/w 420 IPC and also substantive offences thereof.

31.08.2020.

Matter taken up today in compliance of Office Order No. Power/Gaz./RADC/2020/E-8959-9029 dated 16.08.2020 and also in continuation to orders No.819-903/DJ/RADC/2020 dated 16.05.2020, No. E1792-1876/DJ/RADC/2020 dated 22.05.2020, No. E-2574-2639/DJ/RADC/2020 dated 29.05.2020, No. E-3943-4029/DJ/RADC/2020 dated 13.06.2020, No. E-4121-4205/DJ/RADC/2020 dated 15.06.2020 and No. Power/Gaz./RADC/2020/E-5577-5661 Dated 29.06.2020, Power/Gaz./RADC/2020/E-6836-6919 Dated 14.07.2020 and Power/Gaz./RADC/2020/E-7784-7871 dated 30.07.2020 of Ld. District & Sessions Judge-Cum-Spl. Judge (PC ACT) (CBI) Rouse Avenue District Court, New Delhi.

The present matter is being taken up today through video conferencing as regular functioning of the Courts at District Courts has been suspended since 23.03.2020 vide office orders of Hon'ble High Court of Delhi bearing Nos. 373/Estt./E1/DHC dated 23.03.2020, No.159/RG/DHC/2020 dated 25.03.2020, No.R-77/RG/DHC/2020 dated 15.04.2020, No. R-159/RG/DHC/2020 dated 02.05.2020, No. R-235/RG/DHC/2020 dated 16.05.2020, R-305 /RG/DHC/2020 dated 21.05.2020, No.1347/DHC/2020 dated 29.05.2020, No.17/DHC/2020 dated 13.06.2020, No.22/DHC/2020 dated 29.06.2020, No. 24/DHC/2020 dated 13.07.2020, No. 26 /DHC/2020 dated 30.07.2020 and No. 322/RG/DHC/2020 Dated: 15.08.2020.

The hearing of the present matter is being taken up via Cisco WebEx Platform in the presence (onscreen) of:

Present: **Ld. Senior PP Sh. A.P. Singh, Ld. DLA Sh. V.K. Sharma and Ld. DLA Sh. Sanjay Kumar for CBI alongwith IO Inspector Bodh Raj Hans.**
Advocate Sh. Akshay Nagarajan on behalf of Ld. Special PP Sh. R.S. Cheema.

Ld. Counsels Sh. Atul Shankar Mathur and Sh. Vivek Mathur for A-1 company M/s SKS Ispat & Power Ltd.

Ld. Counsel Sh. Shishir Mathur for A-2 Deepak Gupta.

Ld. Counsel Sh. Jai Sahai Endlaw for A-3 Satya Narain Dwivedi.

Ld. Counsel Sh. Arvind Kumar Verma for A-4 Amrit Singh.

E-copy of written submissions have already been filed by Ld. Counsels for accused persons.

Matter be now put up on 13.10.2020 for consideration.

A digitally signed copy of this order is being sent to Sh. Mukesh JJA, Computer Branch, RADDC via WhatsApp for uploading it on the official website of Delhi District Courts.

A copy of order is being retained, to be placed in the judicial file as and when normal functioning of the courts is resumed.

The present order has been dictated on phone to Steno Pawan Singhania.

BHARAT
PARASHAR

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Date: 2020.08.31 11:25:41 +05'30'

**(Bharat Parashar)
Special Judge, (PC Act)
(CBI), Court No. 608
Rouse Avenue Court
New Delhi
31.08.2020.**

CC No. 289/2019 (Old CC No. 79/16)
RC No. 219 2014 E 0015
Branch: CBI/EO-I/New Delhi
CBI Vs. M/s. SKS Ispat & Power Ltd. & Ors.
U/s. 120-B/420/467/468/471/201 IPC &
Sec. 13 (2) r/w 13 (1) (d) P.C. Act, 1988

31.08.2020.

Matter taken up today in compliance of Office Order No. Power/Gaz./RADC/2020/E-8959-9029 dated 16.08.2020 and also in continuation to orders No.819-903/DJ/RADC/2020 dated 16.05.2020, No. E1792-1876/DJ/RADC/2020 dated 22.05.2020, No. E-2574-2639/DJ/RADC/2020 dated 29.05.2020, No. E-3943-4029/DJ/RADC/2020 dated 13.06.2020, No. E-4121-4205/DJ/RADC/2020 dated 15.06.2020 and No. Power/Gaz./RADC/2020/E-5577-5661 Dated 29.06.2020, Power/Gaz./RADC/2020/E-6836-6919 Dated 14.07.2020 and Power/Gaz./RADC/2020/E-7784-7871 dated 30.07.2020 of Ld. District & Sessions Judge-Cum-Spl. Judge (PC ACT) (CBI) Rouse Avenue District Court, New Delhi.

The present matter is being taken up today through video conferencing as regular functioning of the Courts at District Courts has been suspended since 23.03.2020 vide office orders of Hon'ble High Court of Delhi bearing Nos. 373/Estt./E1/DHC dated 23.03.2020, No.159/RG/DHC/2020 dated 25.03.2020, No.R-77/RG/DHC/2020 dated 15.04.2020, No. R-159/RG/DHC/2020 dated 02.05.2020, No. R-235/RG/DHC/2020 dated 16.05.2020, R-305 /RG/DHC/2020 dated 21.05.2020, No.1347/DHC/2020 dated 29.05.2020, No.17/DHC/2020 dated 13.06.2020, No.22/DHC/2020 dated 29.06.2020, No. 24/DHC/2020 dated 13.07.2020, No. 26 /DHC/2020 dated 30.07.2020 and No. 322/RG/DHC/2020 Dated: 15.08.2020.

The hearing of the present matter is being taken up via Cisco WebEx Platform in the presence (onscreen) of:

Present: Ld. Senior PP Sh. A.P. Singh, Ld. DLA Sh. V.K. Sharma, Ld. DLA Sh. Sanjay Kumar for CBI along with IO Dy. SP Sanjay Sehgal.
Advocate Sh. Akshay Nagarajan on behalf of Ld. Special PP Sh. R.S. Cheema.

Ld. Counsels Sh. Atul Shankar Mathur and Sh. Vivek Mathur for A-1 Company SKS Ispat & Power Ltd. and A-2 Anil Gupta.

Ld. Counsel Sh. Shishir Mathur for A-3 Deepak Gupta.

Ld. Counsel Sh. Arvind Kumar Verma for A-4 Amrit Singh and A-6 Jagannath Panda.

Ld. Counsel Sh. Jai Sahai Endlaw for A-5 Rakesh Kumar Singh.

Ld. Counsel Sh. Rahul Tyagi for A-7 H.C. Gupta and A-8 K.S. Kropcha.

APPLICATION ON BEHALF OF ACCUSED NO. 1 FOR TAKING ON RECORD CERTAIN MATERIAL FACTS/CIRCUMSTANCES/ INFORMATION AND SEEKING DIRECTIONS FOR FURTHER INVESTIGATION IN THE MATTER.

Vide my separate order of today's date, the aforesaid application moved on behalf of A-1 M/s SKS Ispat & Power Limited has been dismissed.

Case Matter be now put up on 13.10.2020 for arguments on the point of charge on behalf of accused H.C. Gupta and accused K.S. Kropcha.

A digitally signed copy of this order is being sent to Sh. Mukesh JJA, Computer Branch, RADDC via WhatsApp for uploading it on the official website of Delhi District Courts.

A copy of order is being retained, to be placed in the judicial file as and when normal functioning of the courts is resumed.

The present order has been dictated on phone to Steno Pawan Singhania.

BHARAT PARASHAR Digitally signed by BHARAT PARASHAR
Date: 2020.08.31 11:21:25 +05'30'

**(Bharat Parashar)
Special Judge, (PC Act)
(CBI), Court No. 608
Rouse Avenue Court
New Delhi**

31.08.2020.

CC NO. 238/19 (OLD CC No. 8550/2016)
RC No. 221 2014 E 0015
Branch: CBI/EO-III/New Delhi
CBI Vs. M/s Domco Pvt. Ltd. & Ors.
U/s. 120-B/420 IPC

31.08.2020.

Matter taken up today in compliance of Office Order No. Power/Gaz./RADC/2020/E-8959-9029 dated 16.08.2020 and also in continuation to orders No.819-903/DJ/RADC/2020 dated 16.05.2020, No. E1792-1876/DJ/RADC/2020 dated 22.05.2020, No. E-2574-2639/DJ/RADC/2020 dated 29.05.2020, No. E-3943-4029/DJ/RADC/2020 dated 13.06.2020, No. E-4121-4205/DJ/RADC/2020 dated 15.06.2020 and No. Power/Gaz./RADC/2020/E-5577-5661 Dated 29.06.2020, Power/Gaz./RADC/2020/E-6836-6919 Dated 14.07.2020 and Power/Gaz./RADC/2020/E-7784-7871 dated 30.07.2020 of Ld. District & Sessions Judge-Cum-Spl. Judge (PC ACT) (CBI) Rouse Avenue District Court, New Delhi.

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The hearing of the present matter is being taken up via Cisco WebEx Platform in the presence (onscreen) of:

Present: Ld. DLA Sh. Sanjay Kumar, Ld. DLA Sh. V.K. Sharma and Ld.

Senior PP Sh. A.P. Singh for CBI along with Holding IO Inspector Pawan Kumar Kaushik.

Advocate Sh. Akshay Nagarajan on behalf of Ld. Special PP Sh. R.S. Cheema.

Ld. Counsel Sh. Rahul Tyagi for A-2 Binay Prakash (also AR of A-1 Company M/s DOMCO Pvt. Ltd.), A-3 Vasant Diwakar Manjrekar and A-4 Paramananda Mondal.

Accused Manoj Kumar Gupta is also present.

Ld. Counsel Sh. Rajiv Mohan for A-5 Manoj Kumar Gupta.

Ld. Counsel Sh. Mayank Tripathi for A-6 Sanjay Khandelwal.

E-copy of written submissions have been filed by Ld. DLA Sh. Sanjay Kumar.

E-copy of the same have also been supplied to Ld. Counsels for the accused persons.

Matter be now put up for consideration on 27.10.2020.

A digitally signed copy of this order is being sent to Sh. Mukesh JJA, Computer Branch, RADDC via WhatsApp for uploading it on the official website of Delhi District Courts.

A copy of order is being retained, to be placed in the judicial file as and when normal functioning of the courts is resumed.

The present order has been dictated on phone to Steno Pawan Singhania.

BHARAT
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Date: 2020.08.31 11:24:42 +05'30'

**(Bharat Parashar)
Special Judge, (PC Act)
(CBI), Court No. 608
Rouse Avenue Court
New Delhi
31.08.2020.**

CC No. 276/2019 (Old CC No. 14/17)
RC No. 219 2014 (E) 0016
Branch: CBI, EO-I, New Delhi
CBI Vs. M/s SKS Ispat & Power Ltd. & Ors.
U/s 120-B r/w Section 420 IPC & substantive offences thereof

31.08.2020.

Matter taken up today in compliance of Office Order No. Power/Gaz./RADC/2020/E-8959-9029 dated 16.08.2020 and also in continuation to orders No.819-903/DJ/RADC/2020 dated 16.05.2020, No. E1792-1876/DJ/RADC/2020 dated 22.05.2020, No. E-2574-2639/DJ/RADC/2020 dated 29.05.2020, No. E-3943-4029/DJ/RADC/2020 dated 13.06.2020, No. E-4121-4205/DJ/RADC/2020 dated 15.06.2020 and No. Power/Gaz./RADC/2020/E-5577-5661 Dated 29.06.2020, Power/Gaz./RADC/2020/E-6836-6919 Dated 14.07.2020 and Power/Gaz./RADC/2020/E-7784-7871 dated 30.07.2020 of Ld. District & Sessions Judge-Cum-Spl. Judge (PC ACT) (CBI) Rouse Avenue District Court, New Delhi.

The present matter is being taken up today through video conferencing as regular functioning of the Courts at District Courts has been suspended since 23.03.2020 vide office orders of Hon'ble High Court of Delhi bearing Nos. 373/Estt./E1/DHC dated 23.03.2020, No.159/RG/DHC/2020 dated 25.03.2020, No.R-77/RG/DHC/2020 dated 15.04.2020, No. R-159/RG/DHC/2020 dated 02.05.2020, No. R-235/RG/DHC/2020 dated 16.05.2020, R-305 /RG/DHC/2020 dated 21.05.2020, No.1347/DHC/2020 dated 29.05.2020, No.17/DHC/2020 dated 13.06.2020, No.22/DHC/2020 dated 29.06.2020, No. 24/DHC/2020 dated 13.07.2020, No. 26 /DHC/2020 dated 30.07.2020 and No. 322/RG/DHC/2020 Dated: 15.08.2020.

The hearing of the present matter is being taken up via Cisco WebEx Platform in the presence (onscreen) of:

Present: Ld. Senior PP Sh. A.P. Singh, Ld. DLA Sh. V.K. Sharma and Ld. DLA Sh. Sanjay Kumar for CBI along with IO Inspector M.R. Atrey. Advocate Sh. Akshay Nagarajan on behalf of Ld. Special PP Sh. R.S. Cheema.

Ld. Counsels Sh. Atul Shankar Mathur and Sh. Vivek Mathur for A-1 company M/s SKS Ispat & Power Ltd.and A-2 Anil Gupta.

Ld. Counsel Sh. Shishir Mathur for A-3 Deepak Gupta.

Ld. Counsel Sh. Arvind Kumar Verma for A-4 Amrit Singh.

Ld. Counsels Sh. Neeraj Chaudhari and Sh. Atul Shankar Mathur for A-5 Sudhir Kumar Sahay.

E-copy of written submissions have already been filed by Ld. Counsels for accused persons.

Matter be now put up on 13.10.2020 for consideration.

A digitally signed copy of this order is being sent to Sh. Mukesh JJA, Computer Branch, RADC via WhatsApp for uploading it on the official website of Delhi District Courts.

A copy of order is being retained, to be placed in the judicial file as and when normal functioning of the courts is resumed.

The present order has been dictated on phone to Steno Pawan Singhanian.

**BHARAT
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Date: 2020.08.31 11:23:02
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**(Bharat Parashar)
Special Judge, (PC Act)
(CBI), Court No. 608
Rouse Avenue Court
New Delhi
31.08.2020.**

**IN THE COURT OF SH. BHARAT PARASHAR,
SPECIAL JUDGE (PC ACT) (CBI),
ROUSE AVENUE COURT COMPLEX, NEW DELHI.**

**CC NO. CBI/289/2019 (Old CC No. 79/16)
RC No. 219 2014 (E) 0015
Branch: CBI/EO-I/New Delhi
CBI Vs. M/s SKS Ispat & Power Ltd. & Ors.
U/s. 120-B r/w 420/467/468/471, 201 IPC &
Sec. 13(2) r/w 13(1)(d) of IPC Act 1988**

31.08.2020.

ORDER

**APPLICATION ON BEHALF OF ACCUSED NO. 1 FOR TAKING ON
RECORD CERTAIN MATERIAL FACTS/CIRCUMSTANCES/
INFORMATION AND SEEKING DIRECTIONS FOR FURTHER
INVESTIGATION IN THE MATTER.**

1. By the present application the accused applicant company M/s SKS Ispat & Power Ltd. has prayed that the present matter be sent for further investigation to CBI for fair and unbiased investigation. The present order, thus seeks to decide as to whether in view of the submissions made by Ld. Counsel for accused applicant company the present matter needs to be sent or further investigation to CBI or not.

2. However, before adverting further, it will be appropriate to briefly mention the facts of the prosecution case and the proceedings which have taken place till now:

Present case i.e. **RC No. 219 2014 (E) 0015** pertains to allocation of Fathepur Coal Block situated in Chhattisgarh by 35th

Screening Committee, Ministry of Coal, Government of India in favour of applicant/accused company M/s SKS Ispat and Power Ltd for its captive use in its proposed power project.

3. Upon completion of investigation, CBI filed a Final Report u/s 173 Cr. PC against eight accused persons i.e. M/s SKS Ispat & Power Ltd (A-1), Anil Gupta (A-2), Deepak Gupta (A-3), Amrit Singh (A-4), Rakesh Kumar Singh (A-5), Jagan Nath Panda (A-6), Harish Chandra Gupta (A-7) and Kuljit Singh Kropcha (A-8) for the offences u/s 120-B/409/420/468/471 IPC r/w Sec. 13(1)(c)/13(1)(d) PC Act 1988, 420 IPC, 468 IPC, 471 IPC, 13(1)(d) PC Act, 409 IPC and sec. 13(1)(c) PC Act, 1988. This Court, thereafter, vide order dated 15.12.2016 took cognizance of various offences as above, against all the eight accused persons.

4. After due compliance of Section 207 Cr. PC, matter was adjourned for hearing arguments on the point of charge. It was during the course of hearing the said arguments on the point of charge that the then Ld. Counsel for accused applicant company, Sh. Vijay Aggarwal chose to move an application dated 23.04.2019 seeking directions to CBI for conducting further investigation. However, the said application was dismissed by this Court vide a detailed order dated 28.05.2019 and matter was again adjourned for hearing further arguments on the point of charge. However once again, the present application has been moved by Ld. Counsel Sh. Atul Shanker Mathur for accused company M/s SKS Ispat & Power Ltd seeking directions for further investigation. Extensive arguments on the application were addressed by Ld. Senior Advocate

Sh. Mohit Mathur on behalf of accused applicant company M/s SKS Ispat & Power Ltd and by Ld. Senior PP Sh. A.P. Singh on behalf of prosecution.

5. It has been submitted by Ld. Senior Advocate Sh. Mohit Mathur that while dismissing the earlier application requesting for further investigation, this Court relied upon the observations of Hon'ble Supreme Court in the case ***Amrutbhai Shambhubhai Patel vs Sumanbhai Kantibhai Patel and Others, (2017), 4 Supreme Court Cases 177*** and observed that after cognizance has been taken in a matter then the Court has no power to send the matter for further investigation on the request of accused and especially when prosecution is opposing the said request. It has been however submitted that since then, Hon'ble Supreme Court in the case, ***Vinubhai Haribhai Malaviya & Ors. vs State of Gujarat, 2019 SCC online SC 1346***, has not only overruled the earlier judgement ***Amrutbhai Shambhubhai Patel (supra)*** but has further observed as under:

“49. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences....

To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173 (8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid-way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for

such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156 (3) read with Section 156(1), Section 2(h) and Section 173 (8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised *suomotu* by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in **Hasanbhai Valibhai Qureshi (supra)**. Therefore, to the extent that the judgments in **Amrutbhai Shambubhai Patel (supra)**, **Athul Rao (supra)** and **Bikash Ranjan Rout (supra)** have held to the contrary, they stand overruled. Needless to add, **Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361** and **Reeta Nag v. State of West Bengal and Ors. (2009) 9 SCC 129** also stand overruled.

51. We have already noticed that there is no specific embargo upon the power of the learned Magistrate to direct "further investigation" on presentation of a report in terms of Section 173(2) of the Code. Any other approach or interpretation would be in contradiction to the very language of Section 173(8) and the scheme of the Code for giving precedence to proper administration of criminal justice. The settled principles of criminal jurisprudence would support such approach, particularly when in terms of Section 190 of the Code, the Magistrate is the competent authority to take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to the appropriate conclusion in consonance with the principles of law. It will be a travesty of justice, if the court cannot be permitted to direct "further investigation" to clear its doubt and to order the investigating agency to further substantiate its charge-sheet. The satisfaction of the learned Magistrate is a condition

precedent to commencement of further proceedings before the court of competent jurisdiction. Whether the Magistrate should direct "further investigation" or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct "further investigation" or "reinvestigation" as the case may be, on the facts of a given case."

6. In the light of aforesaid observations of Hon'ble Supreme Court, wherein it has been categorically observed that even after taking cognizance and prior to commencement of trial, the Court has power to send a matter for further investigation, even on the request of accused, Ld. Counsel has submitted that the overall facts and circumstances of the case, coupled with the nature of investigation carried out clearly show that the investigation in the present matter has not been carried out in a methodical manner and the documents supplied by the accused persons during investigation have not been taken into consideration by the investigating officer. A number of points/issues have been highlighted in the present application from para 5-18 to show that the investigation conducted in the present matter was not fair in as much as relevant facts have been concealed from the court.

7. For a ready reference the relevant paragraphs of the application have been reproduced here under:

5 That the Applicant would like to mention that the Investigating Agency has failed to consider and produce relevant documents pertaining to the allocation of coal block and has not investigated the present matter in a methodical manner, particularly on the below mentioned issues.

A. Land Status of the Accused No.1 Company:

6 The Investigating Agency in the Charge sheet has alleged

that the Accused No.1 has fraudulently claimed to have purchased 285.89 acres of private land from several land owners in and around Kharsia Tehsil, Raigarh whereas as per the investigation the Accused No.1 only had land measuring 28.183 acres in its name.

7 The Charge sheet states that land admeasuring 199.669 hect. (around 500 acres) belonging to the villagers/landowners of Village Binjkot and Durramuda i.e. around Kharsia Tehsil, Raigarh has been acquired by the Govt. of Chhattisgarh and subsequently has been allotted to the Accused No.1 on a 99 years lease. The Investigating Agency in the Charge Sheet alleges that as per the said lease, the possession of the said land was with the villagers till December 2010 and was given to the Accused No.1 Company only on 02.02.2011 and hence, the Accused No.1 Company was neither having the said land in their possession neither had it purchased the same as on the date of the Application Form or the Feedback Form. Therefore, the Accused No.1 had misrepresented about its land status.

8 It is humbly submitted that the Investigating Agency has failed to take into consideration several significant documents submitted by the Accused No.1 Company. The Investigating Agency has failed to consider the Affidavits of the villagers/landowners of the Kharsia Tehsil, Raigarh wherein the said villagers/landowners had admitted that they had executed Agreement to Sell with the Accused Company for lands admeasuring around 285 acres.

9 That it is pertinent to mention that as per the local laws in Chhattisgarh, the villages where the above stated land was purchased by the Accused No.1 were falling under the Reserve Schedule Tribal Area and hence the said land could not have been acquired by the Accused No.1. Therefore, the Company had requested the Government of Chhattisgarh to acquire the said land for the project and the state had thereafter initiated land acquisition process under the Land Acquisition Act, 1984 and acquired such land for the benefit of Accused No.1. Requisite documents in this regard were supplied by the Accused No.1 to the Investigating Agency.

10 It is further submitted that the Accused No.1 had registered sale deeds from the villagers, for the remaining land admeasuring 28 acres. In fact, the Company had submitted the said Sale Deeds to the Investigating Agency but the same were not considered. It was based on the above, that the Accused No.1 had mentioned that it had purchased about 300 acres of land.

It is humbly submitted that despite submitting documentary proof agreements to sale with villagers land owners that categorically establishes that the Accused No.1 had over 300 acres of land; the Investigating Agency has wrongly alleged that the Accused No.1 fraudulently misrepresented its actual land status.

B. Misrepresentation qua the net worth

11 *The Investigating Agency in the Charge sheet has alleged that the Accused No.1 has misrepresented its Net worth as Rs. 198.88 crores in the Application Form (as on 31 March 2006) and Rs. 267.70 crores in the Feedback Form (as on 31 March 2007) whereas its actual net worth is Rs. 146.084 crores (as on 31 March 2006) and Rs. 191.349 (as on 31 March 2007).*

12 *It is humbly submitted that the Investigating Agency failed to consider the audited balance sheet of the Accused No.1 Company for the relevant year ending on 31 March 2006 and 31st March 2007. Further, the Investigating Agency did not examine relevant witnesses like the Chartered Accountants of the Accused No.1 Company who had calculated the net worth of the Company. A copy of the Balance Sheet of the Accused No.1 for the year ending 31 March 2006 and 31 March 2007 is annexed herewith as Annexure "A-2" and is also marked as D-36 and D-37 on the documents on record.*

13 *Further, the Investigating Agency did not adopt the accepted accounting standards formulated to calculate the net worth and instead devised a new formula to calculate the net worth. That as a result, the Investigating Agency excluded in their calculation of net worth the amount of Share Application Money and Preference Shares, which were included by the Accused No.1 Company. The above-mentioned stand of the Accused No.1 has been supported by PW-28 Sh. Samiran Dutta in his statement to the Investigating Agency.*

14 *It should be noted that the above-mentioned formula adopted by the Investigating Agency was not made known to the public at large by the MoC. In fact, the definition of the term net worth was absent from the guidelines issues by the MoC.*

15 *The Investigating Agency also failed to consider that the difference in the net worth as alleged by it and the one disclosed by the Accused No.1 is also due to the inclusion of net worth of its group company.*

16 *It would also be pertinent to mention herein that the Investigating Agency did not even scrutinize the business*

structures, financial systems, economic metrics and group classifications of the Accused No.1 Company, before reaching a decision on the net-worth of the Accused No.1.

C. Selective disclosure and submission of documents

17 That it would be pertinent to mention that a writ petition (bearing No. W.P. (C) 7135/2008 titled Prakash Industries v. Union of India & Ors.) was filed before the Hon'ble High Court of Delhi challenging the allocation of coal blocks made in favour of the Accused No.1 Company. That the Hon'ble High Court in the above-mentioned writ petition has made some pertinent observations regarding the coal block allocation and the accused persons. However, the Investigating Agency has completely disregarded the said observations of the Hon'ble High Court of Delhi and has not taken them into consideration while conducting the investigation. It would be pertinent to mention herein that the Investigating Agency has deliberately not placed on record all the documents pertaining to the aforesaid Writ Petition, thereby concealing relevant facts from this Hon'ble Court.

18 In light of the above-mentioned grounds, it is established that the Investigating Agency has not conducted the investigation in a fair and proper manner and has ignored several facts and documents which prove the innocence of the Accused No.1 and can exculpate it.

8. It has thus been submitted that investigation conducted by CBI till date is half-baked, incomplete and not proper. It has been further stated that the CBI has chosen to level various allegations against the accused persons by way of concealing material information supplied to them by the accused during the course of investigation and by also not properly investigating the issues involved. It was submitted that the IO did not take into consideration the information and documents supplied by the accused persons during the course of investigation. It was also submitted that with such nature of biased investigation, the accused cannot expect a fair trial, as he will be greatly prejudiced in putting up his

defence. It has been thus prayed that matter may be referred back for further investigation with the direction to the investigating agency to consider all the material as has been mentioned in the present application.

9. In support of his arguments and the power of the Court to refer the matter for further investigation, Ld. Defence Counsel has placed reliance upon the following case law.

(i) *Vinubhai Haribhai Malaviya & Ors. v. State of Gujarat & Anr., 2019 SCC Online SC 1346.*

10. Ld. Senior PP Sh. A.P. Singh on the other hand, however strongly opposed the application. It was submitted that the investigation in the case has been conducted objectively and in all fairness after taking into consideration all the facts and documents which came to the notice of IO during the course of investigation. Ld. Senior PP Sh. A.P. Singh further submitted that while dismissing the earlier application moved by accused company, wherein also similar submissions were made, this Court in its order dated 29.05.2019 observed that all such issues will certainly be considered to the extent permitted by law at the stage of Charge or during the course of subsequent trial in case the charges are prima facie found to be made out. It was submitted by Ld. Senior PP that by way of present application, Ld. Counsel for applicant/accused company is trying to simply prolong the proceedings in as much as it has clearly come on record during the course of investigation that the applicant/accused company has grossly misrepresented on various counts before the two Screening Committees, Ministry of Coal and had

thereby cheated Ministry of Coal, Government of India in procuring allocation of a captive coal block in its favour. It was thus submitted by Ld. Senior PP that the prosecution as well as the investigating agency are strongly opposing the present application for carrying out further investigation, being not required.

The application was thus prayed to be dismissed.

11. In rebuttal Ld. Senior Advocate Sh. Mohit Mathur for applicant/accused company strongly opposed the submissions of Ld. Senior PP for CBI stating that in view of the latest observations of Hon'ble Supreme Court in the case **Venubhai Haribhai Malaviya (supra)** this Court has all the powers to send the matter for further investigation even at this stage of the matter even if prosecution or the investigating agency are opposing such a request. It was submitted that if the documents and information being supplied/provided by the accused persons are considered then it will be crystal clear that no case at all is made out against the accused persons even to charge-sheet them, much less to frame charges for any offences against them.

12. Though notice of the present application was issued to the Prosecution but no notice was issued to the other accused persons as in view of the nature of submissions made in the application, it was not found to be necessary/required.

13. I have carefully perused the record.

14. At the outset, I may state that in view of the observations of

Hon'ble Supreme Court in the case ***Vinubhai Haribhai Malaviya & Ors. v. State of Gujarat & Anr. (supra)***, there is no dispute that this Court does have the power to send the matter for further investigation at this stage of the matter, provided the Court deems it appropriate in the facts and circumstances of the case. In this regard, it will be appropriate to once again refer to the observations of Hon'ble Supreme Court in ***Vinubhai Haribhai Malaviya & Ors. v. State of Gujarat & Anr. (supra)***, as have also been referred to by Ld. Counsel for accused/applicant company.

"51. We have already noticed that there is no specific embargo upon the power of the learned Magistrate to direct "further investigation" on presentation of a report in terms of Section 173(2) of the Code. Any other approach or interpretation would be in contradiction to the very language of Section 173(8) and the scheme of the Code for giving precedence to proper administration of criminal justice. The settled principles of criminal jurisprudence would support such approach, particularly when in terms of Section 190 of the Code, the Magistrate is the competent authority to take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to the appropriate conclusion in consonance with the principles of law. It will be a travesty of justice, if the court cannot be permitted to direct "further investigation" to clear its doubt and to order the investigating agency to further substantiate its charge-sheet. The satisfaction of the learned Magistrate is a condition precedent to commencement of further proceedings before the court of competent jurisdiction. Whether the Magistrate should direct "further investigation" or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct "further investigation" or "reinvestigation" as the case may be, on the facts of a given case."

15. At the outset, I may however state that a bare perusal of the submissions made in the application clearly show that the present application is simply an attempt to prolong the proceedings and nothing more. Certainly the effect of various agreements to sell stated to have been executed in favour of the company by some of the land owners or the land acquisition policy of the state with respect to tribal land or the circumstances in which the company made a claim before the Screening Committee about being in possession of 300 acres of land will be considered by the Court at the stage of Charge to the extent permitted by law. Similarly, the circumstances in which the company chose to mention the net worth of its group companies or the formula by which the net worth ought to have been calculated is also a matter which requires to be argued and adjudicated upon by the Court and in my considered opinion, no further investigation on the said issue is required. Insofar as the observations made by Hon'ble High Court in some other litigation, pertaining to the present company is concerned, it will be suffice to state that the same will be considered by this Court at the appropriate stage to the extent permitted by law, and if found to be relevant to the matter in issue before this Court.

16. In fact, a perusal of the prayer clause of the application also show that an effort is being made to place on record new documents by the accused persons by way of the present application. The prayer clause of the application read as under:

PRAYER

In view of the facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble Court may be pleased to:

a) Take on record the above-mentioned material as stated in the Application and Direct the Investigating Authority to conduct further investigation in a fair and proper manner in the matter, and/or

b) Pass any other order and directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

17. Thus, it is clear that there is no justification or plausible reason for which the present matter needs to be sent for further investigation to CBI. At the cost of repetition, I may state that the various issues as have been raised by Ld. Counsel for accused applicant company M/s SKS Ispat & Power Ltd. will be certainly considered to the extent permitted by law at the stage of Charge or during the course of subsequent trial, if the charges in the present case are prima facie found to be made out.

18. In view of my aforesaid discussion, the present application is accordingly dismissed, being devoid of any merits.

**BHARAT
PARASHAR**

Digitally signed by
BHARAT PARASHAR
Date: 2020.08.31 11:27:12
+05'30'

**ANNOUNCED IN VIRTUAL COURT
VIA CISCO WEBEX PLATFORM
TODAY ON 31.08.2020**

**(BHARAT PARASHAR)
SPECIAL JUDGE, (PC ACT) (CBI)
ROUSE AVENUE COURT COMPLEX
NEW DELHI.**