

**IN THE COURT OF O. P. SAINI: SPL. JUDGE, CBI (04)/
PMLA (2G SPECTRUM CASES), NEW DELHI**

1. **Complaint Case No.** 01/14
2. **ECIR No.** ECIR/31/DZ/2010
3. **Title:** ED Vs. (1) A. Raja;
(2) Shahid Usman Balwa;
(3) Vinod Goenka;
(4) Asif Balwa;
(5) Rajeev Agarwal;
(6) Karim Morani;
(7) Sharad Kumar;
(8) M. K. Dayalu Ammal;
(9) Kanimozhi Karunanithi;
(10) P. Amirtham;
(11) M/s Swan Telecom (P) Limited (now Etisalat DB Telecom (P) Limited);
(12) M/s Kusegaon Realty (P) Limited (formerly Kusegaon Fruits and Vegetables (P) Limited);
(13) M/s Cineyug Media & Entertainment (P) Limited (formerly Cineyug Films (P) Limited);
(14) Kalaingar TV (P) Limited;
(15) M/s Dynamix Realty;
(16) M/s Eversmile Constructions Company (P) Limited;
(17) M/s Conwood Construction & Developers (P) Limited;
(18) M/s DB Realty Limited; **and**
(19) Mystical Construction (P) Limited (earlier known as Nihar Constructions (P) Limited).
4. **Date of Institution** : 25.04.2014
5. **Date of Commencement of Final Arguments** : 01.06.2015
6. **Date of Conclusion of Final Arguments** : 26.04.2017

7. Date of Reserving Order : 05.12.2017

8. Date of Pronouncement : 21.12.2017

Appearance: Sh. Anand Grover Sr. Advocate/ Spl.
PP with Sh. N. K. Matta Spl. PP, Ms. Sonia
Mathur Advocate, Ms. Chitralkha Das &
Sh. Mihir Samson Junior Counsel and Sh.
Kamal Singh Assistant Director for
Enforcement Directorate (ED).

Sh. Pinaki Misra Sr. Advocate with Sh.
Sandeep Kapur, Sh. Vir Inder Pal Singh
Sandhu and Sh. Abhimanshu Dhyani
Advocates for accused Karim Morani and
Cineyug Media and Entertainment (P)
Limited.

Sh. Shunmugasundaram Sr. Advocate
with Sh. Sudarshan Rajan Advocate for
accused M. K. Dayalu, P. Amirtham and
Kalaaignar TV (P) Limited.

Ms. Rebecca John Sr. Advocate with
Sh. Sushil Bajaj, Ms. Tarannum Cheema,
Ms. Hiral Gupta and Sh. Manvendra Singh
Advocates for accused Kanimozhi
Karunanithi.

Sh. Majid Memon and Sh. Rajneesh
Chuni Advocates for accused Vinod
Goenka.

Sh. Manu Sharma and Sh. Babanjeet

Singh Mew Advocates for accused A. Raja.

Sh. Vijay Aggarwal, Sh. Mudit Jain, Sh. Ehtesham Hashmi and Sh. Ashul Agarwal Advocates for accused Shahid Balwa, Asif Balwa, Rajiv B. Agarwal, Kusegaon Fruits and Vegetables (P) Limited, Dynamix Realty, DB Realty Limited, Eversmile Constructions Company (P) Limited, Conwood Construction & Developers (P) Limited and Mystical Construction (P) Limited (earlier known as Nihar Constructions (P) Limited).

Sh. Balaji Subramaniam and Sh. Abhir Datt Advocates for accused Sharad Kumar.

Sh. Vijay Sondhi, Ms. Deeksha Khurana and Sh. Varun Sharma Advocates for accused Swan Telecom (P) Limited (now Etisalat DB Telecom (P) Limited).

JUDGMENT

The instant complaint case has been filed by Joint Director, Directorate of Enforcement, New Delhi, (hereinafter to be referred as “the complainant”) under Section 45 of the Prevention of Money-Laundering Act 2002 (hereinafter to be referred as “the Act”) on 25.04.2014 for the commission of the offence of money-laundering, as defined in Section 3 and

punishable under Section 4 of the Act, by the accused.

Background

2. Consequent to liberalization Policy of 1991 of Government of India promoting participation of private sector into service sector, NTP-1994 was announced by the Central Government allowing private sector to run telecom services. For running telecom services including Mobile Telephony, a licence is required to be obtained by a company under Section 4 of Indian Telegraph Act. For the commission of telecom services in India, Department of Telecommunications (DoT) has divided the entire territory of India into 22 telecom circles/ service areas. The need and timing for introduction of new service providers in a service area and terms and conditions of licence to a service provider are determined as per the recommendations of Telecom Regulatory Authority of India (TRAI), created under Telecom Regulatory Authority of India Act 1997.

3. Since 2003, telecom licence is known as Unified Access Service (UAS) Licence (hereinafter to be referred as "UASL"). For obtaining licence, a company has to apply to DoT for the same. Receipt of applications for UAS licence has been a continuous process. Since 2005, the grant of UAS licence is governed by UASL Guidelines dated 14.12.2005. An applicant company, which has applied for a UAS licence, is first issued a Letter of Intent (LOI), which contains certain conditions to be complied with by it, up to a specified date, and only then a

licence is issued to it. Thereafter, the company applies to DoT/ Wireless Planning & Coordination (WPC) Cell for allocation of spectrum/ radio waves and only thereafter, the licence becomes functional as mobile services cannot be run without spectrum, which are the order of the day.

4. In this background, many companies had applied for UAS licences. Swan Telecom (P) Limited (STPL) was one of such companies, which had applied on 02.03.2007 for UAS Licences in thirteen service areas. Out of these companies, nine companies were issued LOIs on 10.01.2008, including STPL. STPL was issued LOIs for 13 service areas, including Delhi. On compliance of LOI conditions, these companies signed licence agreements with the Union of India in 2008 and were, thereafter, allocated spectrum during the year 2008-09. Spectrum was allocated to STPL for Delhi service area also.

5. However, there were allegations of irregularities and bribery in this process of issue of LOIs, grant of UAS licences and allocation of spectrum. Accordingly, case RC No. 45(A)/2009 was registered by the CBI on 21.10.2009 against unknown officials of DoT, Government of India, unknown private persons/ companies on the allegations of criminal conspiracy and criminal misconduct.

6. On completion of investigation, CBI filed charge sheet in this Court against twelve accused, including the then Minister, MOC&IT, A. Raja, on the allegations of criminal conspiracy and criminal misconduct in respect of issuance of LOIs, grant of UAS licences and allocation of spectrum by DoT

to two companies, namely, Swan Telecom (P) Limited and Unitech group companies. One of the allegations in the charge sheet is that STPL, at the time of filing applications dated 02.03.2007, was an “Associate” of Reliance ADA group/ Reliance Communications Limited/ Reliance Telecom Limited, having existing UAS licences in all thirteen telecom service areas. As per UASL Guidelines, an existing licensee cannot have 10% or more equity in an applicant/ licensee company in the same service area, either directly or through its associates. Since STPL was alleged to be an “Associate” of an existing licensee, it was ineligible to apply on the date of application.

7. It is further alleged that pursuant to TRAI recommendations dated 28.08.2007, Reliance Communications Limited got GSM spectrum under dual technology policy, in-principle approval for which was granted by A. Raja on 18.10.2007. It is alleged that thereafter this ineligible company was transferred to Dynamix Balwa group (DB group), Mumbai, consequent to which Shahid Usman Balwa and Vinod Goenka joined STPL as directors on 01.10.2007 and this group acquired majority stake in this company on 18.10.2007. It is alleged that this ineligible company was granted UAS licences by A. Raja in criminal conspiracy with these two persons, amongst others, by abusing his official position, and was allocated spectrum also.

8. Thereafter, a supplementary charge sheet was filed by CBI alleging that illegal gratification of Rs. 200 crore was paid by DB group of companies to Sh. A. Raja, beginning with 23.12.2008 to 07.08.2009, for obtaining 13 UAS licences and

allocation of spectrum and this amount was transferred by DB group of companies, that is, Dynamix Realty, a partnership firm of the group, to Kalaingar TV (P) Limited, in which accused Kanimozhi Karunanithi was one of the directors alongwith two more directors, namely, K. K. Dayalu Ammal and Sharad Kumar, and P. Amirtham was General Manager, who later on joined as director, through Kusegaon Fruits and Vegetables (P) Limited, in which Asif Balwa and Rajiv Agarwal were directors and Cineyug Films (P) Limited, in which Karim Morani was one of the directors.

9. Dynamix Realty transferred a sum of Rs. 209.25 crore to Kusegaon Fruits and Vegetables (P) Limited. Details of transfer of Rs. 209.25 crore from Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited, through banking channels by means of cheques, are as follow:

Sl. No.	Date	Amount
1.	23.12.2008	10 crore
2.	12.01.2009	2.5 crore
3.	14.01.2009	0.25 crore
4.	16.01.2009	2 crore
5.	27.01.2009	0.25 crore
6.	28.01.2009	8 crore
7.	29.01.2009	1.5 crore
8.	12.02.2009	2 crore
9.	20.03.2009	5 crore
10.	06.04.2009	1.5 crore
11.	08.04.2009	25 crore
12.	22.06.2009	01 crore
13.	15.07.2009	0.25 crore
14.	16.07.2009	80 crore
15.	16.07.2009	20 crore
16.	11.08.2009	50 crore
	Total	209.25 crore

10. Thereafter, Kusegaon Fruits and Vegetables (P)

Limited transferred an amount of Rs. 200 crore to Cineyug Films (P) Limited through banking channels by means of cheques as per following details:

Sl. No.	Date	Amount
1.	23.12.2008	Rs. 10 Crore
2.	16.01.2009	Rs. 2 Crore
3.	28.01.2009	Rs. 8 Crore
4.	20.03.2009	Rs. 5 Crore
5.	06.04.2009	Rs. 25 Crore
6.	15.07.2009	Rs. 100 Crore
7.	07.08.2009	Rs. 50 Crore
	Total	Rs. 200 Crore

11. Cineyug Films (P) Limited, in turn, transferred the aforesaid amount of Rs. 200 crore to Kalaignar TV (P) Limited through banking channels by means of cheques as per following details:

Sl. No.	Date	Amount
1.	23.12.2008	Rs. 10 Crore
2.	28.01.2009	Rs. 10 Crore
3.	20.03.2009	Rs. 5 Crore
4.	06.04.2009	Rs. 25 Crore
5.	15.07.2009	Rs.100 Crore
6.	07.08.2009	Rs. 50 Crore
	Total	Rs. 200 Crore

12. The allegations, in brief, as per the CBI case, are that A. Raja with his co-accused, by abusing his official position, received illegal gratification of Rs. 200 crore from STPL, an ineligible company, for granting UAS licences and allocating spectrum to it and the gratification was paid by DB group, belonging to Shahid Usman Balwa and Vinod Goenka, also directors of STPL, and was transferred to/ parked in Kalaignar TV (P) Limited.

PMLA Case

13. Following the aforesaid developments leading to registration of CBI case/ scheduled offence, a case was registered by the Directorate of Enforcement (ED) under the provisions of the Act on 09.03.2010, bearing number ECIR/31/DZ/2010, against some unknown officials of DoT and other unknown companies/ private persons. The case was registered under the Act, as per FIR bearing Number RC-DAI-2009-A-0045, dated 21.10.2009, registered by the CBI, ACB, New Delhi. The case registered under the Act, in brief, is that during 2007-08, certain officials of the Department of Telecommunications entered into a criminal conspiracy with certain private persons/ companies and misused their official position in the grant of UASL, causing wrongful loss to the Government and corresponding wrongful gain to individuals/ companies.

14. ED initiated investigation in the instant case with the examination of various persons under the Act and collection of documents from various Government organizations/ companies/ firms and individuals. During the course of investigation, it was revealed that a sum of Rs. 223.55 crore, which is the proceeds of crime in terms of section 2(1)(u) of the Act, was in possession of the Group companies of the promoters of M/s Swan Telecom (P) Limited (hereinafter to be referred as "STPL") and therefore, this amount has been attached under Section 8 (3) of the Act from the entities having possession thereof.

15. It is alleged that investigation under the Act in respect of the attachment of the properties worth Rs. 223.55 crore being the proceeds of crime has made out a case of the offence of money-laundering, by the above named accused persons.

16. The complaint narrates in detail the chronology of events leading the offence of money-laundering by accused persons as under:

Sl. No.	DATES	DESCRIPTION
1	02.03.2007	STPL filed Application for UASL.
2	May, 2007	Shri A Raja took over as Minister for Communication & Information Technology (hereinafter referred to as MOCIT).
3	01.10.2007	S/Shri Shahid Usman Balwa and Vinod K. Goenka became Directors in STPL.
4	18.10.2007	DB Group company acquired majority stake in STPL.
5	18.10.2007	49.90 lakh shares of STPL were allotted to M/s DB Infrastructure Pvt. Ltd.
6	10.01.2008	Letter of Intent (LoI) for UASL was issued. DoT issued a press release at 2:45 pm asking all applicants to assemble at DoT Headquarters within 45 minutes (3:30 pm) to collect LoIs. 13 applicants were ready with Demand Drafts drawn on dates prior to the notification of the cut-off date. STPL had been keeping demand drafts ready since early November, 2007 and October 2007. Further, STPL had got the first Financial Bank Guarantee (FBG) and Performance Bank Guarantee (PBG) for 2 circles as early as the first half of November, 2007, presumably due to prior knowledge about limited spectrum availability in Delhi circle, which was however subsequently changed for Delhi circle.
7	17.12.2008	STPL received share capital money totalling Rs. 3609 crores (Rs. 3228 crores directly from foreign investor and Rs. 381 crores indirectly from abroad through domestic company).
8	19.12.2008	Purported Share Subscription Agreement and Shareholders Agreement dated 19.12.2008 entered between M/s Cineyug Films Pvt. Ltd. (now known as M/s Cineyug Media & Entertainment Pvt. Ltd., hereinafter referred to as CFPL) and M/s Kalaignar TV Pvt. Ltd. (hereinafter referred to as KTV) for acquisition of 32-35%

		<p>stake in KTV which, inter alia, provided, that funds transferred to the latter be treated as a loan if no Agreement is reached between the parties regarding the price of KTV's shares by 31.03.2009.</p> <p>Investigations reveal that though no such Agreement was arrived at between the parties by 31.3.2009, CFPL paid a further sum of Rs. 175 crores to KTV after March, 2009.</p>
9	23.12.2008 to 11.08.2009	<p>For transferring illegal gratification of Rs. 200 crores to KTV, M/s Dynamix Realty (hereinafter referred to as Dynamix Realty) in association with other DB Group companies transferred Rs. 209.25 crores to M/s Kusegaon Fruits and Vegetables Pvt. Ltd. (now known as M/s Kusegaon Realty Pvt. Ltd. hereinafter referred to as KRVPL).</p> <p>There was no Agreement between the two companies for the said transaction. During the course of investigations, it was claimed that this amount was an unsecured loan @ 7.5% interest per annum.</p>
10	23.12.2008 to 07.08.2009	<p>Contemporaneous to the receipt of the said amounts from Dynamix Realty, KRVPL transferred a total sum of Rs. 206.25 crores to CFPL. Of this amount, a sum of Rs. 6.25 crores was transferred for the purpose of acquiring 49% equity stake in CFPL. There was, however, no underlying Agreement for the said transaction which was unsecured. It is relevant to mention that despite holding 49% equity in CFPL, KRVPL has no representatives on its Board.</p> <p>Pursuant to the registration of the FIR dated 21.10.2009 by the CBI and subsequent investigations an arrangement was made between CFPL and KRVPL, whereby transfer of Rs. 200 crores was shown against Optionally Convertible Redeemable Debentures (OCRD) issued by CFPL to KRVPL.</p>
11	23.12.2008 to 07.08.2009	Rs. 200 crores were paid by CFPL to KTV.
12	21.10.2009	FIR No.RC-DAI-2009-A-0045 was registered by the CBI against unknown officials of the Department of Telecommunication, Government of India and unknown private persons/companies for offences punishable under section 120B IPC r/w sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 with reference to a criminal conspiracy hatched during the period 2007-2008 in connection with the grant of UASL thereby causing wrongful loss to the Government of India and corresponding wrongful gain to the private persons/companies.
13	30.12.2009	Entire equity of KTV was pledged to CFPL.
14	27.01.2010	Subscription and shareholders Agreement executed

		between CFPL and its promoters with KJVPL to acquire 49% equity in CFPL. For this, a sum of Rs. 6.25 crores had been paid till 15.07.2009.
15	31.08.2010	Assurance given by Promoters of CFPL for non disposal of 9,51,531 shares of M/s DB Realty Ltd. as additional collateral security for 8% OCRD of Rs. 200 crores, favouring KJVPL.
16	01.12.2010	Additional security given by Promoters of CFPL through pledging and issuing power of attorney for shares of M/s DB Hospitality Pvt. Ltd. held by them favouring KJVPL.
17	24.12.2010	On 23.12.2010, Shri A. Raja was directed to appear before the CBI for the purposes of investigation. Shri A. Raja was examined by CBI on 24.12.2010.
18	02.02.2011	Shri A. Raja was arrested by CBI.
19	20.12.2010 to 03.02.2011	Immediately after Shri A. Raja was summoned by CBI for the purposes of investigation, KTV started refunding the amount of Rs. 200 crores to Dynamix Realty through CFPL & KJVPL. Rs. 231.36 crores were transferred back by KTV to CFPL.
20	20.12.2010 to 03.02.2011	Rs. 225.08 crores were transferred back by CFPL to KJVPL.
21	23.12.2010 to 28.02.2011	Rs. 223.55 crores were transferred back by KJVPL to Dynamix Realty.

17. It is further claimed that investigation in the case began with the recording of statements of various persons, including A. Raja, the then MOC&IT; Shahid Usman Balwa, Director/ shareholder of DB group companies; Vinod K. Goenka, Director/ shareholder of DB group companies; Asif Balwa, Director/ shareholder of Kusegaon Fruits and Vegetables (P) Limited; Rajiv B. Agarwal, Director/ shareholder of Kusegaon Fruits and Vegetables (P) Limited; Karim Morani, Director/ shareholder of Cineyug Films (P) Limited; Sharad Kumar, Director/ shareholder of Kalaignar TV (P) Limited; Kanimozhi Karunanithi, Director/ shareholder of Kalaignar TV (P) Limited; P. Amirtham, General Manager/ CFO of Kalaignar TV (P) Limited; G. Rajendran, authorized representative of Kalaignar

TV (P) Limited; A. Manohar Prasad, Joint Managing Director of GIL; S. Ananda Prasad, Senior General Manager, United Spirits Limited, Chennai; R. Murlidhar, Vice President (Corporate Affairs), India Cements Limited, Chennai; N. Gopalakrishnan, authorized representative of SMIL; Sathik Batcha, now deceased; A. K. Srivastava, the then DDG, DoT; Vinod Kumar Budhiraja, authorized representative of Etisalat DB Telecom (P) Limited; Anil Kumar Khemka; Raj Kumar Tharad; Amit Jain; Sunil Parekh; C. Subramanian; R. Shyam Kumar; Aseervatham Achary, the then Addl. PS to MOC&IT. The statements were recorded under Section 50 of the Act, extracts of which have been cited in the complaint.

18. As per the complaint, analysis about involvement of various companies is as under:

I. **Dynamix Realty:**

Dynamix Realty is a partnership firm as per Partnership Deed entered into by the following partners:

1. Eversmile Construction Company Private Limited
2. Conwood Construction and Developers Private Ltd.
3. D B Realty Limited

The firm has an object of development and construction of the buildings on the Slum Rehabilitation Authority (SRA) as per its relevant Scheme. The audited balance sheet for the year 2010 shows that Dynamix Realty was engaged in the business of financing through loan and advances to the tune of Rs. 632.04 crore. These financial transactions of loans and advances are unrelated to the object of the firm.

II. Kusegaon Fruits and Vegetables (P) Limited (KFVPL):

The investigation has revealed that Kusegaon Fruits and Vegetables (P) Limited was under the control of Asif Balwa and Rajiv B. Agarwal and these two persons were holding 50% shares each. The purpose of this company was to use it as a corporate vehicle for the transfer of funds from Dynamix Realty to Cineyug Films (P) Limited. The financial analysis shown below clearly reveals the purpose of Kusegaon Fruits and Vegetables (P) Limited so as to become vehicle of transfer of funds from Dynamix Realty to Cineyug Films (P) Limited. The ratios given in the table below show that the transmission of funds was the primary activity of Kusegaon Fruits and Vegetables (P) Limited during the relevant period.

(Rs. in crore)

Particulars	2012	2011	2010	2009	2008	2007
Investments	6.25	6.25	-	28.50	-	-
Current Assets	3.07	3.15	221.41	3.00	0.01	0.01
Total Assets (A)	9.32	9.40	221.41	31.50	0.01	0.01
Investments	6.25	6.25	-	28.50	-	-
Loans & Advances	3.00	3.15	221.40	3.00	-	-
Total Financial Assets (B)	9.25	9.40	221.40	31.50	-	-
% Of Financial Assets to Total Assets (B/A)	99.21%	99.96%	100.00%	99.98%	0.00%	0.00%

III. Cineyug Films (P) Limited (CFPL):

As per object clause, the main business of CFPL is to carry on the business of Cinematography, Film Production, Tele Film production, T. V. Serial production, Adfilm production, exhibitions, distribution and theatrical performances. The company is doing business of lending funds to related and associated parties which is not included in the object clause of

the company.

As per balance sheet of Cineyug Films (P) Limited for the financial year 2006-07 the company had incurred loss amounting to Rs. 6.28 crore approximately. At this stage infusion of Rs. 6.25 crore in the equity of Cineyug Films (P) Limited by Kusegaon Fruits and Vegetables (P) Limited, sourced from Dynamix Realty, was, in fact, transaction cost paid to Cineyug Films (P) Limited.

Transfer of Varying Amounts Through The Chain of Companies is as under:

Dynamix Realty to KVVPL		KVVPL to CFPL		CFPL to KTV	
Date	Amount (Rs. in crores)	Date	Amount (Rs. in crores)	Date	Amount (Rs. in crores)
23.12.2008	10.00	23.12.2008	10.00	23.12.2008	10.00
12.01.2009	2.50	16.01.2009	2.00	28.01.2009	10.00
14.01.2009	0.25	28.01.2009	8.00	20.03.2009	5.00
16.01.2009	2.00	29.01.2009	1.50	06.04.2009	25.00
27.01.2009	0.25	12.02.2009	2.00	15.07.2009	100.00
28.01.2009	8.00	20.03.2009	5.00	07.08.2009	50.00
29.01.2009	1.50	06.04.2009	25.00		
12.02.2009	2.00	08.04.2009	1.50		
20.03.2009	5.00	22.06.2009	1.00		
06.04.2009	1.50	15.07.2009	0.25		
08.04.2009	25.00	15.07.2009	100.00		
22.06.2009	1.00	07.08.2009	50.00		
15.07.2009	0.25				
16.07.2009	100.00				
11.08.2009	50.00				
Total	209.25	Total	206.25	Total	200.00

IV. Kalaignar TV (P) Limited:

The Annual Report for the financial year 2007-08 to financial year 2009-10, inter alia, reveals that Kalaignar TV (P) Limited was incorporated on 06.06.2007. Revenue recognition is from broadcasting revenue, sale and commission on

Advertisement. Total loan taken by Kalaignar TV (P) Limited in the financial year 2007-08 was Rs. 103.56 crore approx. P. Amirtham was CFO. Gross income was Rs. 15.03 crore in financial year 2007-08.

In the financial year 2008-09, gross income was Rs. 47.54 crore approx. Total loan taken by Kalaignar TV (P) Limited was Rs. 158.05 crore approx. Total income was Rs. 47.54 crore approx. In the financial year 2009-10, gross income of Kalaignar TV (P) Limited was Rs. 63.12 crore and loss after tax was Rs. 1.36 crore approx. Total loan taken by Kalaignar TV (P) Limited was Rs. 245.59 crore approx. Total share capital of Kalaignar TV (P) Limited was Rs. 10.01 crore. Share Subscription and Shareholders Agreement dated 19.12.2008 between Kalaignar TV (P) Limited and Cineyug Films (P) Limited was not on stamp paper. Kalaignar TV (P) Limited along with promoters collected funds for the refund to Cineyug Films (P) Limited by taking money against future advertisement contracts from various parties as under:-

(i) **From India Cements Limited**

An agreement entered on 12th January 2011 between India Cements Limited and Kalaignar TV (P) Limited for advertisement on the Kalaignar TV (P) Limited's channels for a period of Five Years commencing from January 2011 for total consideration of Rs. 60 crore. Company paid Rs. 60 crore to KTV through two cheques, both dated 18.01.2011, for Rs. 30 crore each.

(ii) **From United Spirits Limited (USL)**

An agreement entered on 25th January 2011 between United Spirits Ltd and KTV for their entire distribution network of the brands and products of the company, for a period of 8 years commencing from February 2011 for a total consideration of Rs. 65 crore. USL paid Rs.65 crore to KTV from 27.11.2011 to 04.03.2011. It had availed Rs. 50 crore 'Unsecured Adhoc Cash credit (short term corporate working capital) Loan from State Bank of Mysore, and also from their day-to-day collection.

(iii) **From Sapphire Media & Infrastructure Limited**

SMIL gave loans and advances of Rs. 83 crore to AFPL from 22.12.2010 to 18.01.2011. SMIL arranged funds from a number of companies for payment to AFPL.

(iv) **From Anjugam Films Private Limited (AFPL)**

AFPL paid an amount of Rs. 83 crore to KTV from 24.12.2010 to 18.01.2011.

Financial Investigation

19. It is alleged that STPL after having illegally obtained the UAS licences attracted Foreign Direct Investment (FDI) from Etisalat Mauritius. It is further alleged that the FDI of Rs. 3228.44 crore was received without the approval of Foreign Investment Promotion Board (FIPB). The stipulated conditions of security clearance had not been fulfilled. In order to camouflage the total FDI as that permissible under the automatic route of the FDI policy norms, Rs. 380 crore were routed through domestic company Genex Exim India Pvt. Limited and further three shares were issued at very high value

of Rs. 316.22 crore. STPL and the foreign investor Etisalat Mauritius have separately been charged under Foreign Exchange Management Act, 1999 (FEMA).

In order to pass on the illegal gratification of Rs. 200 crore, Dynamix Realty (a partnership firm belonging to DB Group) transferred a sum of Rs 209.25 crore to Kusegaon Fruits and Vegetables (P) Limited in tranches, between 2008 to 2009. Kusegaon Fruits and Vegetables (P) Limited transferred Rs. 206.24 crore to Cineyug Films (P) Limited and Cineyug Films (P) Limited transferred Rs. 200 crore finally to Kalaignar TV (P) Limited. The dates on which the amounts were transferred from the starting point, that is, Dynamix Realty to the destination, that is, Kalaignar TV (P) Limited, are not only very proximate to each other but also demonstrate that the financial transactions of varying amounts were carried out with the intention of transferring the illegal gratification to Kalaignar TV (P) Limited, through intermediaries so as to make the transactions appear bonafide, which, in fact, were not. These financial transactions amongst the entities under the control of the accused individuals and related to the accused companies also establish that two intermediary companies namely Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited were brought in to conceal the actual consideration and make the said transfer of funds appear as genuine business deal among the companies.

20. Investigation has further revealed that after allocation of UAS Licence to STPL, the companies and

individuals connected with STPL had procured funds from a number of companies related to DBRL (a company under the control of Vinod K. Goenka, Shahid Usman Balwa, Rajiv B. Agarwal and Asif Balwa). Dynamix Realty did not have its own funds and had taken loans from various related entities. The maximum funds came from DBRL and other companies, which are DB Group companies. On 23.12.2008, Rs. 10 crore was taken by Dynamix Realty from Nihar Constructions (P) Limited, and Nihar Constructions Pvt. Ltd., in turn, had borrowed this amount on the same date from DB Hospitality, (another Group concern of DB Group). DB Hospitality had paid this amount out of the funds borrowed from Allahabad Bank as a commercial loan. The commercial loan in 2008 attracted interest rate of 13 to 14%. That the claim of DB Group that these transactions were loan transactions does not appear to be true because no prudent person will give money @ 7.5% to 10% interest rate out of money borrowed at 13 to 14% interest.

21. It is revealed during the course of investigation under the Act that Kusegaon Fruits and Vegetables (P) Limited passed on Rs. 206,24,75,000/- to Cineyug Films (P) Limited and the source of this amount was from Dynamix Realty. Kusegaon Fruits and Vegetables (P) Limited paid Rs. 200 crore to Cineyug Films (P) Limited during the period 23.12.2008 to 10.08.2009 and it is claimed that transfer was against OCRD @ of 8%. It is further revealed from the scrutiny of documents that through 16 tranches, amount of Rs. 206,24,75,000/- was given to Kusegaon Fruits and Vegetables (P) Limited by Dynamix Realty starting

from 23.12.2008 to 10.08.2009. These transactions were effected through Oriental Bank of Commerce, Ragnigandha Shopping Center, Gokuldhama, Goregaon (E), Mumbai, through Account Number 05211131001346.

22. It is revealed during the course of investigation under the Act that Cineyug Films (P) Limited, incorporated on 10.09.1997, was registered with the Registrar of Companies (ROC), Mumbai. The name of Cineyug Films (P) Limited was changed to Cineyug Media and Entertainment (P) Limited on 13.07.2010. Shareholders of CFPL are as under:

Sl. No.	Name of the Shareholder	No. of shares
1	Shri Karim G. Morani	31875 shares
2	Shri Aly G. Morani	31875 shares
3	Shri M.G. Morani	31875 shares
4	Mrs. Neelam S. Soorma	31875 shares
5	Mrs. Harsha B. Savla	2400 shares
6	KFVPL	122500 shares

23. That the nature of business of the company is film production and event management service. Cineyug Films (P) Limited entered into MOU with Kusegaon Fruits and Vegetables (P) Limited for business cooperation on 16.12.2009. The purpose of MOU was to cooperate with each other to advance their interest in the business and also in the new ventures. Cineyug Films (P) Limited had requested Kusegaon Fruits and Vegetables (P) Limited to partner with it in the business and also in the new ventures. Kusegaon Fruits and Vegetables (P)

Limited had agreed to do so on the terms and conditions as mentioned in this MOU.

24. The Subscription and Shareholder Agreement dated 27.01.2010 and Undertaking dated 31.08.2010 between CFPL and KVVPL after receipt of funds of Rs. 206.25 crores inter alia, reveals as under:-

The Subscription and Shareholder Agreement was undated, signed by Karim Morani, Asif Balwa, Rajiv B. Agarwal and others.

Undated Subscription and Shareholder Agreement (SSA) was entered into between Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited, in which Kusegaon Fruits and Vegetables (P) Limited agreed to invest Rs. 62475000/- towards the equity of CFPL and Rs. 200 crore as OCRD at 8%. Para 2.2 of this Agreement stated that subscription price shall be utilized by the Cineyug Films (P) Limited in expanding its business and till such time it is implemented, the funds may be invested so as to get reasonable returns.

The Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited had entered into an Undertaking on 31.08.2010, which relates to the OCRD against Rs. 200 crore and collectively named as transaction documents. This undertaking was given by Aly Morani, Karim Morani and Mohammed Morani on behalf of Cineyug Films (P) Limited that till final repayment of the OCRD, they will not sell/ transfer their shares in Cineyug Films (P) Limited. They also agreed that they will not transfer 951531 equity shares of DB Realty

Limited, of which they are legal and beneficial owners.

On 01.12.2010 Share Pledge-cum-Power of Attorney was issued to Kusegaon Fruits and Vegetables (P) Limited by Aly Morani, Karim Morani, Mohammed Morani and Ms. Nasreen Morani (obligors) in respect of SSA executed between Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited. The obligors are the legal and beneficial owners of equity and preference shares of DB Hospitality Limited. As per the said Power of Attorney, obligors pledged the shares of DB Hospitality Limited in favour of Kusegaon Fruits and Vegetables (P) Limited, as security towards repayment of OCRD by the Cineyug Films (P) Limited.

25. Cineyug Films (P) Limited transferred the proceeds of crime amounting to Rs. 200 crore to Kalaignar TV (P) Limited. A Shares Subscription and Shareholders Agreement (SSA) dated 19.12.2008 was entered into among Cineyug Films (P) Limited, Kalaignar TV (P) Limited and its Promoters. The agreement, inter alia, reveals that promoters are the direct and beneficial owners and hold shares of KTV. Both KTV and its promoters, inter alia, had agreed that after execution of this agreement and until the closing date, they shall not take any material decision etc., in connection with the any of the matters mentioned in clause 4.1 of the agreement without prior written consent of the Cineyug Films (P) Limited. As per this agreement, Cineyug Films (P) Limited had agreed to subscribe to the equity of Kalaignar TV (P) Limited and the investor was entitled to terminate this agreement by giving a notice in

writing to the company or to the promoters committing a material breach of any of the provisions of the agreement. The promoters of KTV named in the agreement are Ms. M.K. Dayalu, Ms. K. Kanimozhi and Sharad Kumar.

26. The ICD Agreement dated 06.04.2009 between Kalaingar TV (P) Limited and Cineyug Films (P) Limited was entered into as borrower and lender respectively for Rs. 25 crore @ of 10% per annum payable at the end of every six month's period. Likewise following ICD agreements were further entered into between the said two companies :-

(i) ICD Agreement dated 15.07.2009 for Rs. 100 crores

(ii) ICD Agreement dated 07.08.2009 for Rs. 50 crores

27. The Agreement dated 30.12.2009 to pledge shares entered into between KTV and pledgors in favour of Cineyug Films (P) Limited, inter alia, reveals that the parties have executed several loan agreements whereunder KTV has obtained loans of Rs. 200 crore, which are payable with interest. The pledgors are Ms. M.K. Dayalu, Ms. K. Kanimozhi and Sharad Kumar.

28. On 04.02.2011, Cineyug Films (P) Limited and KTV had agreed and accepted that pursuant to the repayment of loan and interest, the agreements relating to SSA and other agreements and loan documents stand terminated with immediate effect. Thus, proceeds of crime to the tune of Rs. 200 crore which was generated because of actions taken by A. Raja got ultimately parked with KTV under the cover of transfer of varying amounts of funds through agreements/ MOU relating to

equity participation/ loan among a chain of inter-linked companies.

29. It is revealed during the course of investigation under the Act that KTV was incorporated in Chennai on 06.06.2007. The Directors of the company are:-

Sl. No.	Name of the Directors	Period
1	Ms. M.K. Dayalu	06.06.2007 to 20.06.2007 and 27.07.2007 to 09.12.2010
2	Ms. K. Kanimozhi	06.06.2007 to 20.06.2007
3	Shri Sharad Kumar	06.06.2007 till date
4	Shri P. Amirtham	12.06.2007 to 27.07.2007 and 28.05.2010 till date

30. The persons named above at serial numbers 1 to 3 are promoter shareholders of the company. Bank account is with the Indian Bank at Chennai. The First Annual Report (2007-2008) of KTV reveals, inter-alia, that paid-up capital of the company was Rs. 7.01 crore out of authorized share capital of Rs. 10 crore. There was a loan of Rs. 50 crore approx. from the director of the company and secured loan of Rs. 53.55 crore. The 2nd Annual Report (2008-2009), inter-alia, revealed that the authorised share capital increased from Rs. 10 crore to Rs. 12 crore and paid up capital increased from Rs. 7.01 crore to Rs. 10.01 crore. The unsecured loan from the director was Rs. 58.69 crore and secured loan was Rs. 99.36 crore approx. The 3rd Annual Report (2009-2010) of KTV, inter alia, revealed that the authorised share capital increased from Rs. 12 crore to Rs. 15 crore and paid up capital remained as in previous year. There

was unsecured loan from others to the tune of Rs. 214.86 crore and the outstanding of unsecured loan from the Directors has been shown as zero (NIL) in this financial year. A comparison of audited balance sheet of KTV for the Annual Report 2008-2009 and Annual Report 2009-2010 reveals that there was no unsecured loan from others in the Annual Report of 2008-2009 as on 31.03.2009, whereas, the Annual Report for 2009-2010 exhibits unsecured loan from others to the tune of Rs. 25 crore as on 31.03.2009.

31. The interest claimed to have been paid on the illegal gratification of Rs. 200 crore, is not as per Section 194A of the Income tax Act 1961 (Tax deducted at source on interest other than “interest on securities”). As per this section, on any interest paid by any person other than individual and HUF, tax has to be deducted at source @ 10% on the interest amount earned. This TDS is to be done every six months and interest is calculated on accrual basis. Payment of illegal gratification started from December, 2008 and ended in August, 2009. Between 23.12.2008 to 07.08.2009, Cineyug Films (P) Limited paid Rs. 200 crore to KTV. Had this amount been loan, as claimed by Cineyug Films (P) Limited and KTV, payment of interest should have started w.e.f. 31.03.2009 and tax should have been deducted on this amount and credited to Government account w.e.f. April, 2009 (time allowed to credit TDS to Government account).

32. The payment of so called interest started w.e.f. 07.05.2010, more than a year after the due date. This

corroborates that Rs. 200 crore is, in fact, proceeds of crime generated by the offences committed by A. Raja, which was passed on to KTV in the garb of loan.

33. Documents submitted by KTV vide letter dated 27.08.2012, inter alia, revealed that details of funds paid back by KTV to CFPL and its sources are as under:-

Sl. No.	Details of repayment made to CFPL	Amount (Rs.)
1	Principal	2,000,000,000
2	Interest	313,630,137
Total Payment		2,313,630,137

Sources of funds

Sl. No.	Description	Amount (Rs.)
1	AFPL	69,61,90,000
2		Advertisement Advances received from;
	The India Cement Ltd.	60,00,00,000
	United Spirits Ltd.	24,50,00,000
3	Regular collection over payments	30,40,69,668
4	Open cash credit with Indian bank	46,83,70,469
	Total	2,31,36,30,137

34. It is further revealed that in the meeting of the Board of Directors of the KTV held on 09.12.2010 and attended

by the Directors, Sharad Kumar and P. Amirtham, a resolution was passed accepting the resignation of Ms. M. K. Dayalu, received through her letter dated 06.12.2010. The resolution authorised Sharad Kumar to make full and final settlement of Inter Corporate Deposit (ICD) availed by the company from Cineyug Films (P) Limited. Vide letter dated 02.06.2010, Cineyug Films (P) Limited asked KTV for payment of interest and vide letter dated 09.06.2010 KTV intimated Cineyug Films (P) Limited that they are in process of arranging funds. Vide communication dated 25.10.2010, Cineyug Films (P) Limited intimated KTV that they are not interested in making investment or converting the loan amount to shares. Vide communication dated 25.11.2010, KTV intimated Cineyug Films (P) Limited that they are in process of arranging funds and anticipate to repay by 31.12.2010. The details of payments from KTV to Cineyug Films (P) Limited relating to the refund of the money, is as under:

Details of Payment from KTV to Cineyug Films (P) Limited:

Date	Amount (in Rs.)	Purpose / Remark
20.12.2010	14,86,54,109	Interest upto 31.03.2010
24.12.2010	10 crores	ICD principal part payment
27.12.2010	20 crores	ICD principal part payment
29.12.2010	9,61,90,000	Interest from 01.04.2010 to 30.09.2010
03.01.2011	10 crores	ICD principal part payment
05.01.2011	10 crores	ICD principal part payment
11.01.2011	10 crores	ICD principal part payment

24.01.2011	65 crores	ICD principal part payment
29.01.2011	25 crores	ICD principal part payment
03.02.2011	50 crores and 5,82,95,576	ICD principal part payment / final interest
Total	230,31,39,685	• Interest amount excludes TDS

Reverse trail of money

35. Investigation under the Act has revealed that refund of proceeds of crime by KTV to Cineyug Films (P) Limited and further refund by Cineyug Films (P) Limited to Kusegaon Fruits and Vegetables (P) Limited and finally by Kusegaon Fruits and Vegetables (P) Limited to Dynamix Realty was/ were carried out through layering mechanism of passing on varying amounts in a reverse chain sequence. Refund of money by KTV was sourced from various related parties and clients in a short span of time. The refund by the company, that is, KTV, was made not only to project the refund of funds as business transactions but also to project the earlier receipt of funds as arising from bonafide business deal so as to conceal the true nature of bribe money. The reverse flow of the funds is summarized as under:

KTV to CFPL		CFPL To KFVPL		KFVPL To Dynamix Realty	
Date	Amount in Rs (crores)	Date	Amount in Rs (crores)	Date	Amount in Rs (crores)
20.12.2010	15.25	20.12.2010	12.19	23.12.2010	12
24.12.2010	10	24.12.2010	10	29.12.2010	10
27.12.2010	20	27.12.2010	20	30.12.2010	20
29.12.2010	10	29.12.2010	8	31.12.2010	7.95
04.01.2011	10	04.01.2011	10	10.01.2011	7.95

05.01.2011	10		05.01.2011	10		10.01.2011	12.06
11.01.2011	10		11.01.2011	10		17.01.2011	10
24.01.2011	65		24.01.2011	65		24.01.2011	65
29.01.2011	25		29.01.2011	25		01.02.2011	25
03.02.2011	50		03.02.2011	50		04.02.2011	50
03.02.2011	6.12		03.02.2011	4.89		12.02.2011	1.35
						28.02.2011	2.24
Total	231.37		Total	225.08		Total	223.55

36. Investigation under the Act has further revealed, inter alia, that Dynamix Realty after receipt of proceeds of crime to the tune of Rs. 223.55 crore from Kusegaon Fruits and Vegetables (P) Limited had transferred the amounts to the entities which are part of DB Group. However, all these entities were not the same from whom Dynamix Realty had received the funds.

37. It is revealed from the financial investigation under the Act that the funds had been passed from Dynamix Realty to KTV and vice versa on a single day on a few occasions by using a chain of corporate vehicles viz., Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited.

38. For all the aforesaid transactions of more than Rs. 200 crore between Dynamix Realty, Kusegaon Fruits and Vegetables (P) Limited, Cineyug Films (P) Limited and Kalaingar TV (P) Limited, there was no valid Agreement signed between any of the parties as the photocopy of the Share Subscription and Shareholders Agreement to this effect made on 19th December, 2008 submitted by KTV, is not on stamp paper

and is not enforceable in law. Further, it is evident that no collateral securities were ensured to secure the alleged loan amounts.

39. Cineyug Films (P) Limited wrote to KTV vide letter dated 25.10.2010 that they are not interested in making the investment in the company or converting the loan amount into shares. Therefore, it was requested to arrange to repay the entire loan amount together with all accrued interest till date immediately.

40. Cineyug Films (P) Limited received Rs. 31.36 crore (Rs. 15.24 crore in 2009-10 and Rs. 16.12 crore in 2010-11) from KTV, in the colour of interest on the amount of Rs. 200 crore paid to KTV by DB Group through Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited.

41. Kusegaon Fruits and Vegetables (P) Limited received Rs. 25.08 crore (Rs. 12.19 crore in 2009-10 and Rs. 12.89 crore in 2010-11) from Cineyug Films (P) Limited in the guise of interest.

42. Kusegaon Fruits and Vegetables (P) Limited was incorporated in December 2006 with the paid up capital of only Rs. 0.01 crore. The company had not started business activities till 2010; still they raised unsecured loans of Rs. 209.25 crore during 2008-10. Dynamix Realty provided loan to the company without obtaining any security against the loan.

43. The investigation under the Act, inter alia, make out that amount to the tune of Rs. 200 crore was paid by promoters of STPL using their group entity Dynamix Realty to KTV, through

Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited, in the garb of legitimate financial transactions, that is, as loan/ share application money. Whereas, in fact, this payment was illegal gratification for and on behalf of A. Raja and his associates in lieu of illegal favours given to STPL for grant of UAS Licence. Investigation, as aforesaid, has further revealed that the return of Rs. 200 crore has been done, alongwith the additional amount, in order to show this illegal payment in the guise of legal and bonafide financial transactions. Thus, in the garb of loan it was, in fact, the illegal gratification, which was apparently projected as untainted property. Besides, the reverse flow of such amount further establishes the projection of proceeds of crime as untainted and is nothing but the process of laundering of money. The entire amount to the tune of Rs. 223.55 crore was, in fact, proceeds of crime and has already been attached by way of Provisional Attachment Order dated 30.08.2011 issued under Section 5(1) of the Act, which has been subsequently confirmed by the Adjudicating Authority on 10.01.2012 in terms of Section 8(3) of the Act. Appeals against the aforesaid confirmation order were filed with the Appellate Tribunal for the Act, New Delhi and the same are pending.

44. The projection of tainted money as untainted was done by the accused persons/ entities in two parts, firstly, when the money flowed from Dynamix Realty to KTV and again when the money flowed back from KTV to Dynamix Realty. For both the transactions, that is, giving the money to KTV and its

subsequent return, the accused persons/ entities gave it a colour of regular business transactions with the intent to conceal its true nature and to project the said tainted amount as untainted. The process of structuring of these dubious transactions for layering of the illegal gratification is a process to project the illicit money as untainted and is squarely covered under the provisions of Section 3 of the Act. The knee jerk reaction shown by the entities involved in the return of this amount was triggered on the date when A. Raja was contacted by the CBI for investigation. That all of a sudden, the trust between the entities vanished and the ultimate beneficiary KTV and its Promoters/ Directors, in consultation with other accused persons, tried to collect money by adopting business deals such as bulk advertisement contracts and even collected money that originated from dubious Kolkata based companies in the garb of loan, which again travelled from companies before landing into the bank account of KTV. Modus-operandi adopted by the accused entities was again the mode of inter-corporate deposits. Sequence flow of fund from one to other entity at the time of reverse flow of funds from KTV to Dynamix Realty corroborate that the entire exercise done by the accused persons/ entities is nothing but projection of proceeds of crime as untainted.

Estimate of the proceeds of crime

45. Investigation under the Act and from the documents including the two charge sheets filed by the CBI, have revealed that Rs. 200 crore was paid by Dynamix Realty to KTV through

Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited, in consideration of the illegal favours extended by A. Raja, in connivance with other accused persons, in allocation of UAS Licences and valuable spectrum during 2008-2009 to STPL.

46. The promoter of STPL and the ultimate owners of Dynamix Realty are the same persons, namely Vinod K. Goenka and Shahid Usman Balwa. Although the payment was made by Dynamix Realty, it was done for and on behalf, of STPL as has been revealed by unravelling of uncommon and unusual business practices adopted by the companies and individuals involved in the payment of the sum of Rs. 200 crore projected as commercial transactions amongst the companies.

47. Dynamix Realty did not have Rs. 200 crore to give as loan to Kusegaon Fruits and Vegetables (P) Limited. Kusegaon Fruits and Vegetables (P) Limited did not have Rs. 200 crore of its own to give it to Cineyug Films (P) Limited. Cineyug Films (P) Limited did not have Rs. 200 crore to advance it to KTV. Dynamix Realty sourced it from a number of sister concerns. Even these sister concerns did not have money to advance it to Dynamix Realty. In a few instances, money was borrowed from nationalized banks to give it to Dynamix Realty even when lending was not a prime objective of the business of any of these concerns. In fact, the funds were borrowed at a much higher rate of interest of 13 to 16 per cent but were purportedly lent to the next entity in the chain at a lower rate of interest of 7.5%, which defies prudent business practices. This corroborates that

the transfer of funds in this manner was for laundering of the proceeds of crime.

48. The funds transferred from Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited and then from Kusegaon Fruits and Vegetables (P) Limited to Cineyug Films (P) Limited and their further transfer to KTV was within a very short span of time. In fact, a few tranches of such fund flow was made on the same day among these companies/ firm. Dynamix Realty and Kusegaon Fruits and Vegetables (P) Limited are owned by same group, and if the purpose was to advance loan to Cineyug Films (P) Limited, then there was no requirement to put an intermediary between Dynamix Realty and Cineyug Films (P) Limited other than to project such transactions as genuine to conceal identity of the persons on whose behalf these funds were transferred.

49. Cineyug Films (P) Limited claimed that it gave Rs. 200 crore to KTV for acquiring shares. There was a purported Share Purchase Agreement between Cineyug Films (P) Limited and KTV. In terms of this agreement, shares had to be transferred by 31.03.2009. However, if shares were not transferred till then, the money given by Cineyug Films (P) Limited to KTV was to be converted into loan. Only Rs. 25 crore was given by Cineyug Films (P) Limited to KTV by 31.03.2009, without any transfer of shares. Hence, in terms of the agreement, there shall be no further flow of funds for share subscription. However, even after 31.03.2009, Cineyug Films (P) Limited continued to give money to KTV for unknown

purpose as the share purchase agreement had expired on 31.03.2009. Thus, fund amounting to Rs. 175 crore continued to be transferred by Cineyug Films (P) Limited to KTV after 31.03.2009 when the agreement had already expired. Such continued process of flow brings out the obligation on the part of Cineyug Films (P) Limited to transfer the full amount of Rs. 200 crore received by them from Dynamix Realty through Kusegaon Fruits and Vegetables (P) Limited even when the claimed purpose for the transfer no longer existed.

50. Investigation under the Act, inter alia, revealed that proceeds of crime to the tune of Rs. 200 crore was paid by Dynamix Realty to KTV through Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited. This payment was illegal gratification for and on behalf of A. Raja in lieu of illegal favours given to STPL by A. Raja. These actions of A. Raja constitute criminal acts under the provisions of IPC and PC Act as stated in the charge sheets filed by the CBI. The individuals and the firms/ companies involved in the transfer of Rs. 200 crore are inter connected.

51. For transfer of the illegal gratification amount of Rs. 200 crore from the beneficiary of illegal favour viz. STPL to the person who extended such favours, the complex process of layering such illegal gratification through a chain of inter connected companies/ firm and transmitting the base bribe amount with varying amounts was adopted. Hence, Rs. 209.25 crore moved from Dynamix Realty, a firm of DB Group to Kusegaon Fruits and Vegetables (P) Limited. After retention of

balance amount by Kusegaon Fruits and Vegetables (P) Limited it transferred Rs. 206.25 crore to Cineyug Films (P) Limited. Kusegaon Fruits and Vegetables (P) Limited was a company closely connected with the DB Group and its business activity during the relevant period was primarily to transfer these funds. Cineyug Films (P) Limited, a company which was under the influence of DB Group, further retained Rs. 6.25 crore and transferred Rs. 200 crore to KTV. The retention of the aforementioned amounts cannot but be explained as compensation for the efforts to obfuscate the real purpose of the transfer. Therefore, Rs. 200 crore is the initial proceeds of crime as defined in Section 2(1)(u) of the Act.

52. Investigation under the Act has further revealed the reverse movement of the proceeds of crime from the final recipient viz., KTV to the origin of the transfer viz. Dynamix Realty through the same two entities of the earlier chain viz. Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited. The investigation has brought out that the reverse flow of the funds occurred from the time A. Raja was asked to join investigation and the completion of the flow coincided with the day of his arrest. Investigations under the Act has revealed how the illegal gratification of Rs. 200 crore was mobilized by KTV in a short span of time since the amount received earlier had already been utilized. The mobilized amount was returned with additional funds so as to appear as if loan was being returned alongwith interest. Therefore, Rs. 231.36 crore was transferred by KTV to Cineyug Films (P) Limited which, in turn,

transferred Rs. 225.08 crore to Kusegaon Fruits and Vegetables (P) Limited. The final amount transferred by Kusegaon Fruits and Vegetables (P) Limited to Dynamix Realty was Rs. 223.55 crore. The funds in the hands of KTV were nothing but the value equivalent of the proceeds of crime already utilized by them. The amount of Rs. 223.55 crore which thus reached Dynamix Realty carried the taint and constitutes proceeds of crime as defined in Section 2(1)(u) of the Act. Rs. 223.55 crore after such circuitous transfers of the initial proceeds of crime have become the 'value of any such property' in terms of Section 2(1)(u) of the Act. The layering activities of moving varying amounts of funds through a chain of inter connected companies/ firm were nothing but projections made to disguise the proceeds of crime as refund of loan with interest.

Role of accused persons

53. Investigation under the Act has, inter alia, revealed that STPL and other DB Group companies, which are involved in the offence of money-laundering, are connected to each other through a number of linkages.

54. STPL is a DB Group company. Shahid Usman Balwa and Vinod K. Goenka, are the Promoters/ Directors of STPL. Dynamix Realty is a partnership firm of three DB Group companies viz. DBRL, Eversmile Construction Company (P) Limited and Conwood Construction and Developers (P) Limited. Shahid Usman Balwa, Vinod K. Goenka, Asif Balwa and Rajiv B. Agarwal were authorized signatories in the said three

companies/ firms. Shahid Usman Balwa and Vinod K. Goenka dictated every major financial transactions of the group companies, though on paper these companies seem to be run by the Board of Directors.

55. Asif Balwa and Rajeev B. Agarwal were also the directors/ stakeholders of Kusegaon Fruits and Vegetables (P) Limited and were also the authorized signatories of the said company. Asif Balwa and Rajeev B. Agarwal also represented Kusegaon Fruits and Vegetables (P) Limited for their 49% stake in Cineyug Films (P) Limited. Karim Morani was a director/ promoter of Cineyug Films (P) Limited and a signatory to all the agreements/ bank instruments in respect of the transactions in question, on behalf of Cineyug Films (P) Limited.

56. A. Raja and Ms. Kanimozhi have close association and interaction. They belong to the same political party being headed by Shri K. Karunanidhi, whose family started and owns KTV. KTV was started by the family of Shri K. Karunanidhi after selling of stake in Sun TV by his wife Ms. M. K. Dayalu.

57. Ms. M. K. Dayalu is holding 60% equity in KTV. Sharad Kumar is holding 20% equity and Ms. K. Kanimozhi is holding 20% equity in KTV. Thus, all three aforementioned persons are promoter shareholders of KTV. Sharad Kumar and P. Amirtham had undertaken financial transactions of KTV and its wholly owned subsidiary called Anjugam Films (P) Limited with an intent to project the proceeds of crime as untainted.

58. Shahid Usman Balwa and Vinod K. Goenka knowingly and willfully used their group companies/ firm

Dynamix Realty with the active association of Rajeev B. Agarwal and Asif Balwa in the scheme of projecting bribe money as untainted through series of inter linked financial transactions projecting these as legitimate business/ loan transactions.

59. Karim Morani, an old friend of Vinod K. Goenka, knowingly allowed the accused persons to use his family owned company, Cineyug Films (P) Limited, as conduit in the scheme of projection of tainted money as untainted. Karim Morani is also holding equity in DBRL and was also Director of M/s Allianz Infratech (P) Limited, the company to whom two UASL were granted by A. Raja, which later on merged with Etisalat DB Telecom Pvt. Ltd. (erstwhile STPL).

60. The promoter shareholders of KTV allowed Sharad Kumar and P. Amirtham to utilize and deploy the proceeds of crime of Rs. 200 crore received in KTV. Sharad Kumar had met key management personnel of DB Group like Rajeev B. Agarwal as well as Karim Morani for facilitating the process of inflow of the proceeds of crime to KTV. In this regard to project the proceeds of crime as untainted documents were created with the knowledge and consent of Ms. M. K. Dayalu and Sharad Kumar without any objection from the promoter shareholder Ms. K. Kanimozhi.

61. A set of circumstances triggered off by the investigations of the CBI initiated against A. Raja set in motion the hasty process of return journey of the proceeds of crime from KTV. In an attempt to retrace their earlier steps the key personnel viz. Sharad Kumar and P. Amirtham were allowed by

the promoter shareholders to mobilize adequate funds to refund the proceeds of crime to its originator.

62. Promoters of DB Group were in contact with A. Raja since he was Minister of Environment and Forest as their group companies had applied and received clearances from the Ministry. Rajeev Agarwal is an old associate of Vinod K. Goenka who was looking after financial affairs of DB Group companies with Asif Balwa. It was STPL, a company represented by Shahid Usman Balwa and Vinod K. Goenka, which was illegally favoured by A. Raja. The proceeds of crime had moved both ways between Dynamix Realty a company closely associated with STPL and KTV a company closely associated with A. Raja through complex processes of money-laundering.

63. The proceeds of crime on its return to Dynamix Realty had become Rs. 223.55 crore through the processes of layering, indulged in by the accused persons, both legal and natural. The Dynamix Realty had dissipated and disseminated a large part of the said proceeds of crime through the network of DB Group companies including its owned/ partner companies. The investigations under the Act led to attachment of the said proceeds of crime of Rs. 223.55 crore from the DB Group companies viz. Dynamix Realty, DB Realty, Eversmile Construction Company (P) Limited, Conwood Constructions & Developers (P) Limited and Nihar Construction (P) Limited.

64. It is alleged that following facts lead to the culpability of the accused persons:

65. Documents received from the CBI and investigation

carried out by the Directorate has revealed, inter alia, that STPL had paid Rs. 1538 crore as entry fee and deposited Rs. 700 crore as bank guarantee totalling Rs. 2238 crore to acquire UAS licence. In this allotment of UAS licence, the criminal activities committed by the accused persons have been revealed in the charge sheets filed by the CBI. Among the reasons for such revelations is the non-consideration of auction and non-revision of entry fee to be charged from STPL. It is, inter alia, made out that allotment of UAS licences in deliberate and dishonest manner at the rate of fee determined in 2001 without any increase in 2008 whereas Department of Telecommunications (DoT) and Ministry of Finance had worked out the increase by 3.5 times from the year 2002 to 2007 in Adjusted Gross Revenue (AGR) per MHz.

66. The charge sheets filed by the CBI has, inter alia, revealed that STPL got the licence even though it did not meet the eligibility criteria. Thus, STPL illegally acquired LOIs on 10.01.2008 and subsequently UAS licences for Rs. 1538 crore and subsequent to the allotment of UAS licences STPL sold stakes (50%) for Rs. 3228 crore to Etisalat Mauritius Ltd. and Rs. 381 crore to Genex Exim Ventures (P) Limited on 17.12.2008.

67. It is revealed in the investigation that, simultaneously, a sum of Rs. 200 crore was arranged by the owners and controllers of STPL and transferred the same to KTV, using various companies as carriers. The amount of Rs. 200 crore is the illegal gratification in lieu of allotment of UAS

licence to STPL by A. Raja and others, as revealed in the charge sheet filed by the CBI.

68. It is revealed during the course of investigation under the Act that to show the transfer as legitimate, this amount of Rs. 200 crore, in fact, was layered with additional funds to disguise its true intent and object of gratification. The funds of Rs. 200 crore were transferred in tranches to KTV in the guise of transactions between companies acting as carriers one after another. The investigation has also revealed that the carrier companies were allowed retention of small portion of funds arising out of layering process, disguised as interest on loan and equity participation.

69. Investigation has revealed that the Dynamix Realty (a DB Group firm) paid Rs. 200 crore to KTV in tranches. Dynamix Realty and STPL are the companies of DB Group, owned and controlled by Shahid Usman Balwa and Vinod K. Goenka. Dynamix Realty paid Rs. 200 crore to KTV through two companies. These two companies are Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited, which acted as carriers to pass on this amount ultimately to KTV. A large part of documentation was created as ex post rationalisation of such transactions to be bonafide business deals. Asif Balwa and Rajeev B. Agarwal were important functionaries of DB Group and owned and controlled Kusegaon Fruits and Vegetables (P) Limited. Karim Morani owned and controlled Cineyug Films (P) Limited.

70. Investigation under the Act has revealed that A. Raja

was in contact with Ms. K. Kanimozhi. The pre-determined destination of the illegal gratification of Rs. 200 crore was KTV. Ms. K. Kanimozhi is one of the promoters and shareholders (20%) of KTV and was given funds by Ms. M. K. Dayalu to acquire 20% equity in KTV. Ms. M. K. Dayalu acquired 60% equity in KTV and balance 20% is with Sharad Kumar. Ms. K. Kanimozhi allowed the pledging of her 20% equity to Cineyug Films (P) Limited, alongwith other two promoter shareholders of KTV in order to conceal the actual nature/ purpose of receipt of Rs. 200 crore in KTV from Dynamix Realty through Cineyug Films (P) Limited. The amount of Rs. 200 crore was consumed by KTV in its business operations, in which P. Amirtham had an important say.

71. When A. Raja was summoned by the CBI and its news came in media, KTV decided to return Rs. 200 crore to Dynamix Realty through the same route, concealing the motive behind refund, by clothing the return of funds with additional amount claimed as the interest component paid to each carrier companies, that is, Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited, which, in fact, was the layering process to conceal the true purpose for the reverse flow by KTV.

72. The KTV rolled back the illegal gratification of Rs. 200 crore using the guise of legitimate transactions and paid back a sum of Rs. 223.55 crore approx. to Dynamix Realty, which included the amount of illegal gratification of Rs. 200 crore. The balance amount of Rs. 23.55 crore was claimed as

interest paid. The refund in excess of the illegal gratification, in fact, is a result of layering process indulged in to transfer funds in the guise of genuine and bonafide transactions.

73. Rs. 223.55 crore which reached back Dynamix Realty by the reverse flow of funds from KTV is the proceeds of crime, as defined in Section 2(1)(u) of the Act. In terms of this Section the said amount is value of the illegal gratification earlier paid to KTV on its return to the originator viz Dynamix Realty. Rs. 23.55 crore is thus the amount generated in the processes and activities connected with the refund of Rs. 200 crore under a design to conceal and project the whole amount as untainted. This amount of Rs. 223.55 crore hence ultimately becomes the proceeds of crime, that resulted from money-laundering and was projected as untainted.

74. The amount of Rs. 223.55 crore being proceeds of crime is involved in the offence of money-laundering in this case. This amount which reached Dynamix Realty had moved from KTV in lieu of illegal gratification received earlier and hence carried the taint. From Dynamix Realty, a sum of Rs. 161.30 crore was passed on to DB Realty Ltd. and a sum of Rs. 48.45 crore was passed on to Nihar Constructions (P) Limited, which is also a DB Group company. It is established that Dynamix Realty is a partnership firm. The partners are Eversmile Construction Company (P) Limited, Conwood Construction & Developers (P) Limited and DB Realty Limited. Accordingly, assets representing the respective values of the proceeds of crime amounting to Rs. 223.55 crore have been

attached under the Act from the assets of the firm Dynamix Realty, its three partners and Nihar Constructions (P) Limited. This attachment of the proceeds of crime has been confirmed by the adjudicating authority under the Act. A number of appeals before the Appellate Tribunal for PMLA and High Courts have been filed by the accused persons against the order of confirmation of the attachment by the adjudicating authority.

75. Thus, the offence of money-laundering has been established by the investigation carried out under the Act against the accused persons named in the complaint and the proceeds of crime amounting to Rs. 223.55 crore has been attached.

Role of each Accused

76. The role of each individual accused/ company is as under:

I. A. Raja:

A. Raja in conspiracy with other accused persons, namely, Shahid Usman Balwa, Vinod K. Goenka and STPL, has given illegal favour to STPL. He altered the cut-off date for applying for UASL and changed the first-come first-served policy.

The criteria for ineligibility of STPL was overlooked by A. Raja and this stands corroborated by the statement dated 08.03.2011 of Sh. A. K. Srivastava and his written note.

Arrangements for distribution of Letter of Intent (LoI) on 10.01.2008 were made with a view to alter priority in favour of STPL. This is corroborated by the statement dated 08.02.2011

of Sh. A. K. Srivastava.

Promoters of DB Group were known to A. Raja, since he assumed the office of the Minister of Environment and Forests. This is corroborated by letter dated 08.10.2012 of Vinod K. Goenka and statements dated 28.01.2011 and 21.02.2011 of Sh. A. M. Sadhick Batcha (now deceased).

A. Raja was in regular touch with Ms. K. Kanimozhi since 2007 which stands confirmed by his statement dated 10.07.2012, statement dated 16.06.2012 of Ms. Kanimozhi and statement dated 27.05.2013 of Sh. Aseervatham Achary.

Illegal gratification of Rs. 200 crore started moving from Dynamix Realty to KTV on 23.12.2008 when the FDI and equity contribution to the tune of Rs. 3609 crore was received by STPL on 17.12.2008. A. Raja was called by CBI on 24.12.2010 and immediately thereafter Rs. 200 crore started moving back from KTV to Cineyug Films (P) Limited and transaction was completed on 03.02.2011 just a day after his arrest.

The linkage between movement back of proceeds of crime of Rs. 223.55 crores to Dynamix Realty and the investigation and arrest of A. Raja by the CBI clearly reveals his role and active participation in the offence of money-laundering.

Thus, A. Raja is actually involved in the illegal allotment of UAS Licence to STPL in commission of the offences under IPC and PC Act as revealed in the CBI charge sheets. He was instrumental in getting generated a sum of Rs. 200 crore as illegal gratification by committing criminal activities. The said amount was paid by Dynamix Reality (DB Group firm) to KTV.

The Dynamix Realty, STPL and other DB Group companies providing funds to Dynamix Realty to pay illegal gratification of Rs. 200 crore in KTV are, inter alia, under the control and ownership of Shahid U. Balwa and Vinod K. Goenka. Moreover, one of the conduits in the transfer of Rs. 200 crore to KTV, namely, Kusegaon Fruits and Vegetables (P) Limited is also related to DB Group.

Hence, A. Raja in connivance with Ms. M. K. Dayalu, Ms. K. Kanimozhi and Sharad Kumar, was actually involved in parking the illegal gratification of Rs. 200 crore received from Shahid U. Balwa and Vinod K. Goenka in KTV. He was also actually involved in the process of refund of the proceeds of crime of Rs. 223.55 crore in order to wriggle out of the charges of crime. Thus, A. Raja has committed the offence of money-laundering as defined under Section 3 of the Act.

II. Shahid Usman Balwa & Vinod Goenka

Shahid Usman Balwa and Vinod K. Goenka consciously used their group companies with the active association of Rajeev B. Agarwal and Asif Balwa in the scheme of projecting illegal gratification as untainted. The projection was made through a series of inter-connected financial transactions devised and used as layering process, which involved movement of varying amounts through inter linked companies.

DB Group companies applied and received clearance from the Ministry of Environment and Forests as is reflected from the contents of the letter dated 08.10.2012 of Vinod K. Goenka. Promoters of DB Group were in regular contact with A. Raja

since he assumed the office of Minister of Environment and Forests. Both of them paid quid-pro-quo of Rs. 200 crore to A. Raja in lieu of illegal favours extended to their group company STPL.

Further, Shahid Usman Balwa and Vinod K. Goenka roped in Rajeev Agarwal, Asif Balwa and Karim Morani in their scheme of projecting the illegal gratification as untainted. Their group companies as well as company of their associate Karim Morani were used to transfer funds to pre-determined entity (KTV) in nexus with A. Raja, Ms. M. K. Dayalu, Ms. Kanimozhi and Sharad Kumar. Dynamix Realty, a partnership firm was opened with the object of development and construction of the buildings on the Slum Rehabilitation Area (SRA) Plots as per the relevant Scheme of the Slum Rehabilitation Authority. This firm acted contrary to its main object and collected funds from a number of associates/ group companies and diverted the same to a Group company Kusegaon Fruits and Vegetables (P) Limited for its ultimate transfer to KTV through Cineyug Films (P) Limited. The act of Dynamix Realty was as per dictates of Shahid Usman Balwa and Vinod K. Goenka with the assistance of Rajeev B. Agarwal and Asif Balwa.

Shahid Usman Balwa and Vinod K. Goenka are promoters/ directors of STPL (DB Group company). Dynamix Realty is a partnership firm of three DB Group companies viz. DB Realty Ltd., Eversmile Construction Company (P) Limited and Conwood Constructions & Developers (P) Limited, in which Shahid Usman Balwa and Vinod K. Goenka alongwith Asif

Balwa and Rajeev B. Agarwal were, inter alia, shareholders/ directors/ authorized signatories. Asif Balwa and Rajeev B. Agarwal were also shareholders/ directors of Kusegaon Fruits and Vegetables (P) Limited.

Shahid Usman Balwa and Vinod K. Goenka were involved in the procurement of UAS Licence illegally in the name of STPL, by committing the scheduled offences, as revealed in the CBI charge sheets. They were also actually involved in the offence of payment of illegal gratifications amounting to Rs. 200 crore to KTV and in the projection of the same as untainted. Shahid Usman Balwa and Vinod K. Goenka were also actually involved in receiving back the proceeds of crime amounting to Rs. 223.55 crore in the manner and period as aforesaid so as to project the same as untainted. Hence, Shahid Usman Balwa and Vinod K. Goenka have committed the offence of money-laundering in terms of Section 3 of the Act.

III. Asif Balwa & Rajiv Agarwal

Rajiv B. Agarwal is an old associate of Vinod K. Goenka and has been working with him since 1993. Asif Balwa is a relative of Shahid Usman Balwa and is a person of his confidence. Both of them were looking after finances of DB Group companies including DB Realty Limited, Dynamix Realty, Conwood Constructions & Developers (P) Limited, Eversmile Constructions Company (P) Limited, Nihar Constructions (P) Limited and Kusegaon Fruits and Vegetables (P) Limited.

Kusegaon Fruits and Vegetables (P) Limited is a company controlled by both the individuals. Both of them were holding

100% equity of Kusegaon Fruits and Vegetables (P) Limited, which was taken over by them from K. M. Goenka and Pramod Goenka in July, 2008, with a view to use this company as Special Purpose Vehicle for transfer of funds from DB Group to KTV.

Asif Balwa was director of STPL when the company got licence. Rajiv B. Agarwal was looking after the process of getting UASL from DoT on behalf of STPL. Both of them did not appoint any director in Cineyug Films (P) Limited even after holding 49% equity of Cineyug Films (P) Limited. Both of them used Kusegaon Fruits and Vegetables (P) Limited to transfer funds to pre-determined entity KTV. Rajiv B. Agarwal in his statement admitted, as being aware before the investment in Cineyug Films (P) Limited, that Cineyug Films (P) Limited will, in turn, pass on the money to KTV. Both of them were actually involved in the scheme of projecting illegal gratification as untainted.

Asif Balwa and Rajiv B. Agarwal in association with Shahid Usman Balwa and Vinod K. Goenka were, inter alia, shareholders/ directors/ authorized signatories of DB Group companies. Asif Balwa and Rajiv B. Agarwal were shareholders/ directors of Kusegaon Fruits and Vegetables (P) Limited. Asif Balwa and Rajiv B. Agarwal represented Kusegaon Fruits and Vegetables (P) Limited for 49% stake in Cineyug Films (P) Limited.

Asif Balwa and Rajiv B. Agarwal were actually involved in the layering of illegal gratification amounting to Rs. 200 crore

paid to KTV after the illegal allotment of UAS Licence to STPL. Both of them were also actually involved in layering of the amount of Rs. 223.55 crore on the return journey from KTV. They were thus actually involved in projecting the proceeds of crime as untainted and thus committed the offence of money-laundering as defined under Section 3 of the Act.

IV. Karim Morani

Karim Morani is a childhood friend of Vinod K. Goenka who joined as director of Allianz Infratech (P) Limited (holder of telecom Licences for two circles) on the persuasion of Vinod K. Goenka. Allianz Infratech was later on merged with STPL. He and his brothers, namely, Ali Morani and Mohammad Morani, are holding 951531 equity shares of DB Realty Ltd.

He knowingly associated himself with Vinod K. Goenka and Shahid Usman Balwa and allowed them to use Cineyug Films (P) Limited, a company owned by himself and family members as a conduit for transfer of illegal gratification amounting to Rs. 200 crore from Dynamix Realty to KTV and roll back of Rs. 223.55 crore from KTV to Dynamix Realty.

Karim Morani entered into deal with Asif Balwa and Rajiv B. Agarwal to give them 49% equity in Cineyug Films (P) Limited without having any nomination of their Directors. Karim Morani knowingly allowed Cineyug Films (P) Limited to become a device for layering of the proceeds of crime.

Karim Morani allowed Cineyug Films (P) Limited to be used to transfer the proceeds of crime from Kusegaon Fruits and Vegetables (P) Limited to KTV and then received the proceeds of

crime from KTV and transfer back to Kusegaon Fruits and Vegetables (P) Limited. He entered into dubious documentation with Kusegaon Fruits and Vegetables (P) Limited and with KTV as to project the proceeds of crime as untainted.

Karim Morani knowingly assisted in the projection of proceeds of crime as untainted. Hence, he has committed the offence of money-laundering in terms of Section 3 of the Act.

V. Sharad Kumar

Sharad Kumar is a promoter shareholder and director of KTV since its incorporation. He attended/ chaired all board meetings of KTV, wherein the decisions regarding financial transactions relating to Rs. 200 crore were taken. He signed most of the agreements with Cineyug Films (P) Limited, including agreement to pledge shares at the time of receipt of funds and for mobilization of funds for refunding the same.

Sharad Kumar and P. Amirtham were responsible for and looked after AFPL, from which a large chunk of funds was mobilised and transferred to KTV for repayment. He worked in tandem with P. Amirtham to carry out the financial transactions connected with the receiving of illegal gratification in KTV and refund of proceeds of crime of Rs. 223.55 crore to Dynamix Realty in the guise of bonafide company business. Sharad Kumar and P. Amirtham undertook financial transactions of KTV and AFPL, with the motive to project the proceeds of crime as untainted.

Sharad Kumar by being actually involved in receiving the payment of illegal gratification amounting to Rs. 200 crore and

again by being actually involved in the refund of proceeds of crime of Rs. 223.55 crore by projecting the said refund as untainted money has thus committed the offence of money-laundering as defined under Section 3 of the Act.

VI. M. K. Dayalu

The inflow of illegal gratification of Rs 200 crore in KTV and its utilization by KTV was made when Ms. M. K. Dayalu was holding the post of director and was one of the promoters and the majority shareholder (60%) in the KTV. She was the original subscriber to Memorandum of the company. She attended meetings of the shareholders (that is, EOGM/AGM) and meetings of Board of Directors (as a director) during the period when the illegal gratification of Rs. 200 crore was received in KTV.

Statements of P. Amirtham (the then CFO of the company) and of Sharad Kumar (the shareholder of 20% stake and director) further corroborate that Ms. M. K. Dayalu was instrumental in deciding about the strategic decisions in the company as she had the majority shareholding.

The flow of funds at the time of refund of illegal gratification shows that the amount of Rs. 83 crore was transferred from AFPL to KTV. This amount was mobilised by AFPL from SMIL which, in turn, received funds through Kolkata based companies/ firms, which provide “accommodation entries”. The decision regarding incorporation of AFPL as wholly owned subsidiary of KTV was taken by the Board of Directors on 28.05.2010 when Ms. M.K. Dayalu was also authorised to sign

the necessary documents and to do acts & deeds required for incorporation of AFPL. Hence, she was involved in the refund of proceeds of crime of Rs. 223.55 crore from KTV to Dynamix Realty.

Thus Ms. M. K. Dayalu was actually involved in the commission of the offence of money-laundering as defined under Section 3 of the Act.

VII. Kanimozhi Karunanithi

Ms. K. Kanimozhi was director and promoter of KTV. KTV was incorporated by her family, as closely held company. Ms. M. K. Dayalu sold her stakes in Sun TV and gave Rs. 5 crore to Ms. K. Kanimozhi, who further invested Rs. 2 crore approx in KTV out of the said amount. Ms. K. Kanimozhi attended Board meetings on 06.06.2007, 12.06.2007 and 20.06.2007 of the company. In these meetings, important decisions such as appointment of P. Amirtham as Director and general authorisation to Sharad Kumar and P. Amirtham on behalf of the Board of Directors were taken. She attended EOGM on 06.07.2007, 30.07.2007 and first AGM on 28.11.2008 of the company. She attended first AGM of the company in which profit and loss account of the company for the year were submitted and approved.

Ms. K. Kanimozhi and A. Raja arranged the illegal gratification of Rs. 200 crore to be parked in KTV. Ms. K. Kanimozhi continued to retain 20% shareholding in KTV as promoter shareholder. She allowed to pledge her shares to CFPL in order to layer the receipt of illegal gratification of Rs. 200

crore and thus assisted in the projection of illegal gratification as untainted.

During the meeting of Board of Directors on 28.12.2009, a resolution was passed that shareholders of KTV shall pledge their shares to Cineyug Films (P) Limited against the security of funds which was the illegal gratification from Dynamix Realty and received in KTV. She was a promoter shareholder (20%) in KTV and allowed the said resolution to be implemented.

Sh. Aseervatham Achary in his statement on 27.05.2013 stated that A. Raja used his influence in getting clearance from the Ministry of Information and Broadcasting for bouquet of channels for KTV and Ms. K. Kanimouzhi was a regular visitor to the residence of A. Raja at 2A, Motilal Nehru Marg, New Delhi.

The refund of proceeds of crime of Rs. 223.55 crore got triggered off by the CBI investigation against A. Raja with whom Ms. K. Kanimozhi has close nexus. KTV in which Ms. K. Kanimozhi remained a promoter shareholder set in motion arrangements for mobilization of funds which was used to make payment of Rs. 223.55 crore to Dynamix Realty in lieu of the illegal gratification earlier received and utilised by KTV.

Ms. K. Kanimozhi knowingly facilitated and was actually involved in the process of generation and layering of the proceeds of crime and in projection of it as untainted property. She has, therefore, committed the offence of money-laundering as defined under Section 3 of the Act.

VIII. P. Amirtham

P. Amirtham is confidant of Ms. M. K. Dayalu and Ms. K.

Kanimozhi and is in their close relation. This fact was confirmed from profile of P. Amirtham in valuation report of AFPL prepared by Collins Stewart Image (P) Limited, which shows that he is a person of confidence for family of Ms. K. Kanimozhi and Ms. M. K. Dayalu. He was associated with KTV from the beginning of its operations as CFO and director. He was appointed as authorized signatory by the Board of Directors of the company in its first board meeting on 06.06.2007 and was also appointed as General Manager (Administration).

P. Amirtham signed the ICD Agreements and promissory notes with Cineyug Films (P) Limited on behalf of KTV. He also signed letters to the Indian Bank relating to refund of funds to Cineyug Films (P) Limited. He was instrumental in deployment and use of Rs. 200 crore received from Cineyug Films (P) Limited. He looked after AFPL, from which a major chunk of funds was received for refund. He worked in tandem with Sharad Kumar to carry out the financial transactions for mobilization of funds for refund.

P. Amirtham was closely associated with transaction of Rs. 200 crore from its receipt in KTV to its utilization and repayment back to Cineyug Films (P) Limited. He was responsible for managing affairs of AFPL in close association with Ms. M. K. Dayalu and Sharad Kumar with the intent to project the proceeds of crime as untainted.

P. Amirtham was actually involved in utilization of the proceeds of crime of Rs. 200 crore and its refund amounting to Rs. 223.55 crore to Dynamix Realty through processes and

activities so as to project the said amount of Rs. 223.55 crore as untainted. He has thus committed the offence of money-laundering as defined under Section 3 of the Act.

IX. Swan Telecom (P) Limited

STPL was illegally allotted UAS Licences by committing the offences under IPC and PC Act as revealed in the charge sheets filed by the CBI. The consideration of Rs. 200 crore for the said illegal favour by A. Raja was arranged by the associated companies and individuals of the DB Group and transferred to KTV through layering process so as to project the same as untainted. The illegal favours were granted by altering the cut-off date for applying to DoT, by changing first-come first-served policy, by over looking eligibility criteria of STPL and by arrangements for distribution of LOI on 10.01.2008. Promoters of this company Vinod K. Goenka and Shahid Usman Balwa were in touch with A. Raja since he was Minister of Environment and Forests.

DB group acquired majority stake in STPL on 18.10.2007. Thereafter, Shahid Usman Balwa and Vinod K. Goenka were in charge of and responsible for the business of STPL.

Rs. 3609 crore was received by STPL on 17.12.2008 as equity. During the period 23.12.2008 to 11.08.2009, Dynamix Realty (partnership firm of DB Realty Limited, Eversmile Construction Company (P) Limited and Conwood Constructions & Developers (P) Limited) transferred Rs. 209.25 crore to Kusegaon Fruits and Vegetables (P) Limited of which Asif Balwa and Rajiv B. Agarwal were promoters and Directors.

Shahid Usman Balwa and Vinod K. Goenka are promoters and directors of STPL. Dynamix Realty is a partnership firm of three DB group companies in which Asif Balwa and Rajiv B. Agarwal alongwith Shahid Usman Balwa and Vinod K. Goenka were shareholders/ directors/ authorized signatories. Asif Balwa and Rajiv B. Agarwal were shareholders/ directors of Kusegaon Fruits and Vegetables (P) Limited. Asif Balwa and Rajiv B. Agarwal represented Kusegaon Fruits and Vegetables (P) Limited for 49% stake in Cineyug Films (P) Limited. Thus, promoters of STPL arranged transmission of the proceeds of crime to KTV through Dynamix Realty as well as arranged its reverse flow of Rs. 223.55 crore to Dynamix Realty through layering processes, by the DB Group network of which STPL is a part. Therefore, STPL was actually involved and has committed the offence of money-laundering as defined under Section 3 of the Act.

X. Kusegaon Fruits and Vegetables (P) Limited

KFVPL was taken over by Rajiv B. Agarwal and Asif Balwa and was used as Special Purpose Vehicle for the transfer of illegal gratification of Rs. 200 crore to the pre-determined entity, that is, KTV. The aforementioned accused persons having control on this company had used it again while receiving the refund of the proceeds of crime. Rajiv B. Agarwal and Asif Balwa were Chief Operating Officer and Chief Financial Officer respectively of DBRL and looked after day-to-day working of DB Group companies.

Dynamix Realty transferred Rs. 209.25 crore to Kusegaon

Fruits and Vegetables (P) Limited of which Asif Balwa and Rajiv B. Agarwal were directors.

Kusegaon Fruits and Vegetables (P) Limited transferred Rs. 206.25 crore to Cineyug Films (P) Limited.

Kusegaon Fruits and Vegetables (P) Limited received Rs. 225.08 crore from Cineyug Films (P) Limited on the return journey of the proceeds of crime from KTV to Dynamix Realty.

Kusegaon Fruits and Vegetables (P) Limited received Rs. 225.08 crore from Cineyug Films (P) Limited on the return journey of the proceeds of crime from KTV to Dynamix Realty.

Kusegaon Fruits and Vegetables (P) Limited, under the control of Asif Balwa and Rajiv B. Agarwal, acted as a company in the chain to transfer the proceeds of crime on its way to KTV and back. Kusegaon Fruits and Vegetables (P) Limited was used to transfer varying amounts and allowed to retain certain amounts at each stage of transfer so as to effectively layer the proceeds of crime and to project it as untainted.

Kusegaon Fruits and Vegetables (P) Limited has knowingly assisted the layering of the transfer of proceeds of crime and has thus committed the offence of money-laundering as defined under Section 3 of the Act.

XI. Cineyug Films (P) Limited

Cineyug Films (P) Limited is owned and controlled by one of the accused persons Karim Morani and was used as special purpose vehicle for the transfer of illegal gratification of Rs. 200 crores to KTV. Cineyug Films (P) Limited was used again in the refund of proceeds of crime to Dynamix Realty. Asif Balwa and

Rajiv B. Agarwal represented Kusegaon Fruits and Vegetables (P) Limited for 49% stake in Cineyug Films (P) Limited.

Cineyug Films (P) Limited transferred Rs. 200 crore to KTV.

Cineyug Films (P) Limited received Rs. 231.36 crore from KTV on the return journey of the proceeds of crime from KTV to Dynamix Realty.

Cineyug Films (P) Limited transferred Rs. 225.08 crore to Kusegaon Fruits and Vegetables (P) Limited.

Cineyug Films (P) Limited has knowingly assisted STPL in the transfer of proceeds of crime amounting to Rs. 200 crore from Dynamix Realty to KTV after the illegal allotment of UAS Licence to STPL in the manner and period as aforesaid and has also again knowingly assisted in transferring back the proceeds of crime of Rs. 223.55 crore from KTV to Dynamix Realty as untainted money through the layering process of transferring varying amounts at the two stages of transfer. Thus, CFPL has committed the offence of money-laundering as defined under Section 3 of the Act.

XII. Kalaignar TV (P) Limited

KTV was the pre-determined company in which illegal gratification of Rs. 200 crore was paid under the garb of genuine business transactions amongst the companies. The company is owned and controlled by the accused persons namely Ms. M. K. Dayalu, Ms. K. Kanimozhi, Sharad Kumar and P. Amirtham.

From 23.12.2008 to 07.08.2009, Rs. 200 crore was

received by KTV from Cineyug Films (P) Limited.

FIR was registered by the CBI on 21.10.2009. Before this date the funds of Rs. 200 crore transferred to KTV was to acquire equity but after registration of the case by the CBI, the funds of Rs. 200 crore was shown as loan to KTV.

KTV pledged its shares on 30.12.2009 to Cineyug Films (P) Limited after registration of the case by the CBI.

A. Raja was to be examined on 24.12.2010 and he was finally arrested on 02.02.2011. KTV refunded Rs. 231.36 to Cineyug Films (P) Limited from 20.12.2010 to 03.02.2011.

KTV by receiving the illegal gratification of Rs. 200 crore for and on behalf of A. Raja from Dynamix Realty on behalf of STPL and again by refunding the amount of Rs. 223.55 crore to Dynamix Realty through the layering process projected the same as untainted money. KTV was actually involved and has thus committed the offences of money-laundering as defined under Section 3 of the Act.

XIII. Dynamix Realty

Dynamix Realty is a partnership firm of DB Realty Limited, Eversmile Construction Company (P) Limited and Conwood Constructions & Developers (P) Limited Dynamix Realty acted contrary to its main object and collected and diverted the funds of Rs. 200 crore to a group company Kusegaon Fruits and Vegetables (P) Limited for its ultimate transfer to KTV through Cineyug Films (P) Limited. Dynamix Realty was used to transfer Rs. 200 crore as illegal gratification to KTV for illegal favours extended by A. Raja to STPL, a DB Group company.

Dynamix Realty transferred Rs. 209.25 crores to Kusegaon Fruits and Vegetables (P) Limited.

Kusegaon Fruits and Vegetables (P) Limited paid back Rs. 223.55 crore to Dynamix Realty from 23.12.2010 to 28.02.2011.

Proceeds of crime of Rs. 133.88 crore approx. have been attached from Dynamix Realty.

Dynamix Realty by being actually involved in making payment of Rs. 200 crore to KTV and by receiving the refund of Rs. 223.55 crore from KTV through the layering process to project the proceeds of crime as untainted has thus committed the offence of money-laundering as defined under Section 3 of the Act.

XIV. Eversmile Construction Company Pvt. Ltd. (ECCPL)

ECCPL is a DB Group company under the control of Shahid Usman Balwa and Vinod K. Goenka.

Rajiv B. Agarwal is one of the directors of ECCPL.

ECCPL is partner in the firm Dynamix Realty.

Proceeds of crime of Rs. 13.76 crore approx. have been attached from ECCPL, and is knowingly a party to the offence of money-laundering.

ECCPL has committed the offence of money-laundering in terms of Section 3 of the Act.

XV. Conwood Constructions & Developers Pvt. Ltd.(CCDPL)

CCDPL is a DB Group company under the control of Shahid Usman Balwa and Vinod K. Goenka.

Rajiv B. Agarwal is one of the directors of CCDPL.

CCDPL is partner in the firm Dynamix Realty.

Proceeds of crime of Rs. 22.56 crore approx. have been attached from CCDPL and is knowingly a party to the offence of money-laundering.

CCDPL has committed the offence of money-laundering in terms of Section 3 of the Act.

XVI. DB Realty Ltd.(DBRL)

DBRL is a DB Group company under the control of Shahid Usman Balwa and Vinod K. Goenka. Asif Yusuf Balwa is Executive Director of DBRL.

Rajiv B. Agarwal is Chief Operating Officer of DBRL.

The proceeds of crime of Rs. 161.30 crore have flown from Dynamix Realty to DBRL, out of the proceeds of crime of Rs. 223.55 crore received from KTV.

Proceeds of crime of Rs. 52.16 crore approx. have been attached from DBRL and is knowingly a party to the offence of money-laundering.

DBRL has committed the offence of money-laundering in terms of Section 3 of the Act.

XVII. Nihar Constructions Pvt. Ltd. (NCPL)

NCPL is a DB Group company under the control of Shahid Usman Balwa and Vinod K. Goenka.

Rajiv B. Agarwal is a director of NCPL.

Dynamix Realty transferred Rs. 48.54 crore to NCPL out of the proceeds of crime of Rs. 223.55 crore received from KTV.

Proceeds of crime of Rs. 1.18 crore approx. have been attached from NCPL and is knowingly a party to the offence of

money-laundering.

NCPL has committed the offence of money-laundering as defined under Section 3 of the Act.

77. In the end, it is alleged that A. Raja was the MOC&IT and had given illegal favour to STPL in the allotment of UASL on 10.01.2008. An amount of Rs. 200 crore was paid as illegal gratification to him in KTV. This amount was returned through the process of layering as Rs. 223.55 crore to Dynamix Realty. Thus, A. Raja has committed the offence of money-laundering as defined under Section 3 by receiving and refunding of the proceeds of crime amounting to Rs. 223.55 crore in the period and manner as aforesaid in the complaint which is punishable under Section 4 of the Act.

78. Shahid U. Balwa and Vinod K. Goenka, after illegal favour of allotment of UASL to STPL, had paid illegal gratification of Rs. 200 crore to A. Raja through the process of layering from Dynamix Realty to KTV via Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited. Shahid U. Balwa and Vinod K. Goenka had received back the said Rs. 200 crore through a process of layering from KTV as Rs. 223.55 crores in Dynamix Realty via Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited. Shahid U. Balwa and Vinod K. Goenka controlled the companies and the firms of DB Group and thus, Shahid U. Balwa and Vinod K. Goenka have committed the offence of money-laundering as defined under Section 3 of the Act and Section 3 read with Section 70 of the Act being the persons responsible for the offence of money-

laundering by STPL, DBRL, Dynamix Realty, Conwood Construction & Developers (P) Limited, Eversmile Construction Company (P) Limited and Nihar Constructions (P) Limited, in the manner and period as aforesaid in the complaint which is punishable under Section 4 of the Act.

79. Asif Balwa and Rajiv B. Agarwal were actually involved along with Shahid U. Balwa and Vinod K. Goenka in the payment of illegal gratification of Rs. 200 crore in KTV acting on behalf of A. Raja. They were also actually involved along with Shahid U. Balwa and Vinod K. Goenka in the process of layering and receipt of proceeds of crime of Rs. 223.55 crore by KTV to Dynamix Realty. Thus, Asif Balwa and Rajiv B. Agarwal have committed the offence of money-laundering as defined under Section 3 of the Act and Section 3 read with Section 70 of the Act being the persons responsible to the company for the offence of money-laundering committed by STPL, Kusegaon Fruits and Vegetables (P) Limited, DBRL, Dynamix Realty, Conwood Construction & Developers (P) Limited, Eversmile Construction Company (P) Limited and Nihar Constructions (P) Limited in the manner and period as aforesaid in the complaint which is punishable under Section 4 of the Act.

80. Karim Morani, a promoter shareholder of Cineyug Films (P) Limited had knowingly assisted transfer of illegal gratification of Rs. 200 crore to KTV and refund of proceeds of crime of Rs. 223.55 crore in the manner and period as aforesaid in the complaint. Karim Morani has thus committed the offence

of money-laundering as defined under Section 3 of the Act and Section 3 read with Section 70 of the Act being the person responsible for the offence of money-laundering by CFPL, which is punishable under Section 4 of the Act.

81. Sharad Kumar, a promoter shareholder and Director of KTV in association with Ms. M.K. Dayalu, Ms. K. Kanimozhi and P. Amirtham was actually involved in the parking of the illegal gratification of Rs. 200 crore in KTV and in the refund of the same to KTV under process of layering as Rs. 223.55 crore. Sharad Kumar has thus committed the offence of money-laundering as defined under Section 3 of the Act and Section 3 read with Section 70 of the Act being the person responsible for the offence of money-laundering by KTV, which is punishable under Section 4 of the Act.

82. Ms. M. K. Dayalu, a promoter shareholder and Director of KTV, was actually involved in parking the illegal gratification of Rs. 200 crore in KTV by A. Raja and also in the refund of proceeds of crime of Rs. 223.55 crore to Dynamix Realty in the manner and period as aforesaid. Ms. M.K. Dayalu has thus committed the offence of money-laundering as defined under Section 3 of the Act and Section 3 of the Act read with Section 70 of the Act being the person responsible for the offence of money-laundering by KTV which is punishable under Section 4 of the Act.

83. Ms. K. Kanimozhi, a promoter shareholder of KTV, in association with A. Raja had arranged the illegal gratification of Rs. 200 crore to be parked in KTV and was actually involved in

the refund of the same through the process of layering of Rs. 223.55 crore to Dynamix Realty in the manner and period as aforesaid. Thus Ms. K. Kanimozhi has committed the offence of money-laundering as defined under Section 3 of the Act and Section 3 of the Act read with Section 70 of the Act being the person responsible for the offence of money-laundering by KTV which is punishable under Section 4 of the Act.

84. P. Amirtham, authorized person & Director of KTV in association with Ms. M.K. Dayalu, Sharad Kumar and Ms. K. Kanimozhi utilized the illegal gratification of Rs. 200 crore parked in KTV for A. Raja and was actually involved in the refund of the same by KTV through the process of layering as Rs. 223.55 crore to Dynamix Realty in the manner and period as aforesaid. P. Amirtham thus has committed the offence of money-laundering as defined under Section 3 of the Act and Section 3 read with Section 70 of the Act being the person responsible for the offence of money-laundering by KTV which is punishable under Section 4 of the Act.

85. STPL was illegally allotted UASL by A. Raja for which a sum of Rs. 200 crore of illegal gratification was paid in KTV through a process of layering from Dynamix Realty, which has been received back by Dynamix Realty from KTV through process of layering as Rs. 223.55 crore. Dynamix Realty and STPL being DB Group companies were actually involved in layering of proceeds of crime generated out of illegal gratification and its refund. STPL has thus committed the offence of money-laundering as defined under Section 3 of the

Act in the period and manner as aforesaid which is punishable under Section 4 of the Act.

86. Kusegaon Fruits & Vegetables (P) Limited had passed on the illegal gratification of Rs. 200 crore to Cineyug Films (P) Limited after its receipt from Dynamix Realty and refunded proceeds of crime of Rs. 223.55 crore to Dynamix Realty after its receipt from Cineyug Films (P) Limited and has thus knowingly assisted the process of layering in the manner and period as aforesaid in the complaint and has thus committed the offence of money-laundering as defined under Section 3 of the Act which is punishable under Section 4 of the Act.

87. Cineyug Films (P) Limited had passed on the illegal gratification of Rs. 200 crore to KTV after its receipt from Kusegaon Fruits & Vegetables (P) Limited and transferred the refund of proceeds of crime of Rs. 223.55 crore to Dynamix Realty through Kusegaon Fruits & Vegetables (P) Limited and has thus knowingly assisted the process of layering in the manner and period as aforesaid in the complaint and has thus committed the offence of money-laundering as defined under Section 3 of the Act which is punishable under Section 4 of the Act.

88. KTV received illegal gratification of Rs. 200 crore in lieu of illegal favour given to STPL by A. Raja through a process of layering. KTV refunded the proceeds of crime through the process of layering to Dynamix Realty as Rs. 223.55 crore in the manner and period as aforesaid in the complaint. KTV was thus

actually involved and hence has committed the offence of money-laundering as defined under Section 3 of the Act which is punishable under Section 4 of the Act.

89. Dynamix Realty, after illegal allotment of UASL to STPL had paid illegal gratification of Rs. 200 crore to KTV on behalf of A. Raja through a process of layering and received back the same again through the process of layering from KTV as Rs. 223.55 crore. Dynamix Realty was thus actually involved and has committed the offence of money-laundering as defined under Section 3 of the Act in the manner and period as aforesaid which is punishable under Section 4 of the Act.

90. Eversmile Construction Company (P) Limited, one of the companies of DB Group, owned and controlled by Shahid U. Balwa, Rajiv B. Agarwal and Vinod K. Goenka, is owner partner of Dynamix Realty. Eversmile Construction Company (P) Limited is knowingly a party in parking the proceeds of crime Rs. 13.76 crore approx. Eversmile Construction Company (P) Limited, therefore, has committed the offence of money-laundering as defined under Section 3 of the Act and Section 3 read with Section 70 of the Act being the person responsible for the offence of money-laundering by Dynamix Realty in the manner and period as aforesaid in the complaint which is punishable under Section 4 of the Act.

91. Conwood Construction & Developers (P) Limited, one of the companies of DB Group, owned and controlled by Shahid U. Balwa, Rajiv B. Agarwal and Vinod K. Goenka, is owner partner of Dynamix Realty. Conwood Construction &

Developers (P) Limited is knowingly a party in parking the proceeds of crime Rs. 22.56 crore approx. Conwood Construction & Developers (P) Limited, therefore, has committed the offence of money-laundering as defined under Section 3 of the Act and Section 3 read with Section 70 of the Act being the person responsible for the offence of money-laundering by Dynamix Realty in the manner and period as aforesaid in the complaint which is punishable under Section 4 of the Act.

92. DBRL, one of the companies of DB Group, owned and controlled by Shahid U. Balwa, Asif Balwa and Vinod K. Goenka, is owner partner of Dynamix Realty. DBRL is knowingly a party in parking the proceeds of crime of Rs. 161.30 crore. DBRL therefore has committed the offence of money-laundering as defined under Section 3 of the Act and Section 3 read with Section 70 of the Act being the person responsible for the offence of money-laundering by Dynamix Realty in the manner and period as aforesaid in the complaint which is punishable under Section 4 of the Act.

93. Nihar Construction (P) Limited, one of the companies of DB Group, owned and controlled by Shahid U. Balwa, Rajiv B. Agarwal and Vinod K. Goenka, is knowingly a party in parking the proceeds of crime Rs. 48.54 crore. Nihar Construction (P) Limited, therefore, has committed the offence of money-laundering as defined under Section 3 of the Act in the manner and period as aforesaid in the complaint which is punishable under Section 4 of the Act.

94. Hence, this complaint under Section 45 of the Act.

Appearance of the accused

95. On being summoned, all nineteen accused appeared before the Court on 26.05.2014. Copies of the complaint and the documents were supplied to them to their satisfaction.

CHARGE

96. Arguments on charge were heard in detail and thereafter, charge was ordered to be framed against all accused vide order dated 31.10.2014, which was read over and explained to each accused, to which each one pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE

97. In support of its case, prosecution examined twenty-four witnesses.

98. PW 1 is complainant Sh. Himanshu Kumar Lal (H. K. Lal), Joint Director, Enforcement Directorate, Government of India, New Delhi. He deposed along the line of allegations in the complaint, reiterating the same in the witness box. He also proved documents Ex PW 1/A to 1/M-12.

99. PW 2 is Dr. Prabhakant, the then Joint Director, Enforcement Directorate. He supervised the investigation of the instant case since its beginning in 2010. He had passed the Provisional Attachment Order, Ex PW 2/A, in the instant case, attaching property worth approximately Rs. 200 crore, details of

which are mentioned in the order itself. After passing the aforesaid Provisional Attachment Order, he also filed a complaint, Ex PW 2/B, before the Adjudicating Authority, which confirmed the attachment order vide its order Ex PW 2/C. He also proved other documents Ex PW 2/D to H.

100. PW 3 Sh. S. Ananda Prasad, Sr. General Manager, United Spirits Limited, Bangalore, deposed that it (United Spirits Limited) entered into a long-term advertisement contract dated 25.01.2011 for eight years with Kalaignar TV (P) Limited for a sum of Rs. 65 crore, which was paid in three or four tranches. He also gave statements Ex PW 3/B, C and F to the ED. He also proved documents Ex PW 3/A, D, E, F and F-1.

101. PW 4 is Sh. R. Muralidhar, Vice President, India Cements Limited. He deposed that an amount of Rs. 60 crore was paid to Kalaignar TV (P) Limited by India Cements Limited in 2011 for advertising its products. He also gave statements Ex PW 4/A and B to ED. He also proved documents in this regard Ex PW 4/C to E.

102. PW 5 is Sh. Amit Jain, a practicing Chartered Accountant, New Delhi. He deposed that in 2010, Sh. Sunil Parakh, a Kolkata based businessman, approached him for arranging some accommodation entries for Sapphire Media Infrastructure Limited (SMIL). Accordingly, he approached Sh. Anil Khemka, a Kolkata based entry provider, who arranged accommodation entries for an amount of Rs. 43 crore. However, later on, entries worth about Rs. 30 crore were reversed. In this regard, he gave statements Ex PW 5/A and B to ED. He also

proved a letter, Ex PW 5/C, written to ED.

103. PW 6 is Sh. Sunil Parakh, a Kolkata based businessman. He deposed that in 2010 Sh. M. K. Reddy approached him for providing accommodation entries of an amount of approximately Rs. 40 crore. He, in turn, approached his friend Sh. Amit Jain and consequently entries were provided and money went to SMIL, though later on, entries worth Rs. 30 crore were reversed. In this regard, he tendered statements Ex PW 6/A and B to the ED.

104. PW 7 is Sh. Shyamm Kumar, Director, Telesat Media Matrix and Sapphire Media and Infrastructure Limited (SMIL), a company of Gemini Group, who is responsible for campaigns for films produced/ acquired by the group. He deposed that Sh. A. Manohar Prasad and Sh. N. Gopala Krishnan are in control of Gemini group of companies. He further deposed that he was informed post 2010 that SMIL would be acquired by Sharad Kumar and he would continue to officiate for sourcing funds for acquisition of content till such time fresh board of directors was inducted. He also deposed that he was informed that Sharad Kumar was sourcing funds from various Kolkata based companies for content acquisition and he (Shyamm Kumar) would sign all the loan agreements to that effect. He further deposed that a sum of about Rs. 74.75 crore was transferred by Kolkata based companies to SMIL. He further deposed that the aforesaid fund was transferred to Anjugam Films (P) Limited for content acquisition. In this regard, he also tendered statements Ex PW 7/A and B to ED. He also proved letters Ex PW 7/C and

D.

105. PW 8 is Sh. Anil Khemka, a Kolkata based businessman, engaged in providing accommodation entries. He deposed that sometime in December 2010, Sh. Amit Jain, a Delhi based Chartered Accountant, approached him seeking accommodation entries for Sh. M. K. Reddy, who, in turn, asked him to provide accommodation entries in favour of SMIL. He further deposed that he used to get cash on various dates from Sh. Reddy at his Kolkata office and thereafter, the cash was used to be rotated through a chain of companies, not necessarily controlled by him, and in this way, he provided accommodation entries of an amount of Rs. 43.75 crore approximately to SMIL. He further deposed that subsequently entries worth about Rs. 30 crore were reversed. In this regard, he tendered his statement Ex PW 8/E to the ED. He also proved various documents relating to the companies controlled by him and accommodation entries provided by him, which are Ex PW 8/A to G-1.

106. PW 9 is Sh. Aseervatham Achary, former Personal Assistant to A. Raja. He has deposed that Shahid Balwa and Vinod Goenka used to visit office as well as residence of A. Raja. He also deposed that in 2007, Kalaignar TV (P) Limited was launched by the family members of Sh. M. Karunanithi, the chief of DMK party. He also deposed that Kanimozhi Karunanithi is the active brain behind Kalaignar TV (P) Limited and she also used to visit residence of A. Raja and she once visited his office at Electronics Niketan, New Delhi. He proved his statement Ex

PW 9/A tendered to the ED.

107. PW 10 is Sh. A. K. Upadhyay, a Kolkata based Advocate. He had submitted documents on behalf of PW 8 Sh. Anil Khemka to ED. He has reiterated the statement of Sh. Anil Khemka in regard to the documents, Ex PW 8/A and B-1 to B-48.

108. PW 11 is Sh. R. Anand Babu, Chief Manager, Indian Bank, Kodambakkam Branch, Chennai. He deposed that Kalaignar TV (P) Limited is having an open cash credit account No. 733560561 with his branch. He further deposed that account opening form has been signed by Sharad Kumar, M. K. Dayalu and Kanimozhi Karunanithi as directors of Kalaignar TV (P) Limited. He has also deposed about transfer to and from this account of various funds during the relevant period and has proved cheques and other related documents Ex PW 11/A to O in this regard.

109. PW 12 is Sh. C. Subramanian, a Chennai based Chartered Accountant and Consultant to Mindspace Consulting Services (P) Limited. He deposed that in 2010 there was a land deal between Mindspace Consulting Services (P) Limited and SMIL and an amount of Rs. 22.5 crore was paid by Mindspace Consulting Services (P) Limited to SMIL. He further deposed that the deal could not materialize and in 2011 the amount was returned. He further deposed that Mindspace Consulting Services (P) Limited obtained the aforesaid amount as inter-
corporate deposit from M/s Shaw Wallace Breweries Limited. He has also proved his statement Ex PW 12/A-4. He also proved

documents Ex PW 12/A-1 to A-4 to 12/C-1 to C-12.

110. PW 13 is Sh. S. Veeramani, Assistant General Manager, Andhra Bank, T. Nagar Branch, Chennai. He produced documents relating to account No. 055711011009274 of SMIL as Ex PW 13/A-1 to A-12.

111. PW 14 is Sh. Kamal Singh, Assistant Director, ED. He assisted in the investigation of the instant case, both as Enforcement Officer as well as, on his promotion, as Assistant Director. In the course of investigation of this case, he recorded statements, under Section 50 of the Act, of Sh. S. Ananda Prasad, Ex PW 3/F, Sh. Shyamm Kumar, Ex PW 7/A, Sh. Amit Kumar Jain, Ex PW 5/A, Sh. Sunil Parakh, Ex PW 6/B, and Sh. T. Sivasubramanian, Ex PW 14/A. He also proved a letter Ex PW 14/B, written by daughter of accused M. K. Dayalu.

112. PW 15 is Sh. Satyendra Singh, also an Assistant Director, ED. He assisted in the investigation of the instant case, both as Enforcement Officer as well as, on his promotion, as Assistant Director. In the course of investigation of this case, he also recorded statements, under Section 50 of the Act, of various witnesses as well as some accused and also seized documents. He has proved statements and documents Ex PW 15/A to V-5.

113. PW 16 is Sh. Chandru Taurani, Branch Manager, Standard Chartered Bank, Ville Parle, Mumbai. He has proved documents relating to account No. 23905026378 owned by Cineyug Films (P) Limited. These documents are Ex PW 16/A-1 to A-18. He has also deposed that as per the account opening

form, Karim Morani was one of the directors of the company.

114. PW 17 is Sh. Gopala Krishnan, General Manager (Finance), Gemini Group of Companies, Chennai. He deposed that Sapphire Media and Infrastructure Limited (SMIL) is one of the companies of Gemini group of companies, Chennai, being managed by Sh. A. Manohar Prasad. He deposed that he appeared before the ED on behalf of the company and submitted documents and also tendered his statement. He has proved his statement as well as documents Ex PW 17/A-1 to D-26. He also stated that between December 2010 to January 2011, this company received Rs. 83 crore from various companies. He also deposed that SMIL was to be taken over by Sharad Kumar of Anjugam Films (P) Limited.

115. PW 18 is Raj Kumar Tharad, an associate of PW 8 Sh. Anil Khemka. He deposed that he works with Sh. Anil Khemka and had signed documents submitted by him (Anil Khemka) to ED on his asking pertaining to three companies of Sh. Anil Khemka, namely, Sunview Retail (P) Limited, Peach Agencies (P) Limited and Chirag Tradecom (P) Limited. He also deposed that a total amount of Rs. 8.25 crore was sent to Sapphire Media and Infrastructure Limited (SMIL) from Sunview Retail (P) Limited; and Rs. One crore each from Peach Agencies (P) Limited and Chirag Tradecom (P) Limited.

116. PW 19 is Sh. Rajeshwar Singh, Deputy Director, ED. He investigated the instant case after recording ECIR, Ex PW 2/H, on 09.03.2010, based on predicate offences under Section 120-B IPC and Section 13(1)(d) read with Section 13(2) of

Prevention of Corruption Act. In the course of investigation, he recorded statements of Asif Balwa, Karim Morani, Kanimozhi Karunanithi, Sh. V. K. Budhiraja, Sh. A. K. Srivastava and Sh. Sathik Batcha, since expired, under Section 50 of the Act. He also proved the statements and documents Ex PW 19/A to R. He also deposed about the movement of money from Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited, Kusegaon Fruits and Vegetables (P) Limited to Cineyug Films (P) Limited and Cineyug Films (P) Limited to Kalaingar TV (P) Limited and vice-versa. He also deposed that these transactions are not bona fide transactions.

117. PW 20 is Sh. Manohar Prasad of Gemini group of companies. He deposed that his late father-in-law was owner of SMIL, though it is not a company of Gemini group. He further deposed that in December 2010, Sharad Kumar intended to takeover SMIL and a meeting was called for this. He further deposed that he accordingly instructed his staff that they should take instructions from Sharad Kumar as the company would be taken over by him and thereafter there were transactions between SMIL and Anjugam Films (P) Limited. He also deposed that thereafter an amount of about Rs. 80 crore was transferred from SMIL to Anjugam Films (P) Limited. He further deposed that these transactions were carried on as per the instructions of Sharad Kumar. He also deposed that ED had recorded his statement. He also proved his statements and documents Ex PW 20/A-1 to K.

118. PW 21 is Sh. G. Rajendran, Vice President (Finance),

Kalaignar TV (P) Limited, Chennai. He deposed that he appeared before ED on behalf of the company and tendered his statements and also various documents on its behalf. He deposed about the transaction of Rs. 200 crore between Kalaignar TV (P) Limited and Cineyug Films (P) Limited as a loan. He also deposed about transfer of money from SMIL to Anjugam Films (P) Limited. He also deposed as to how Kalaignar TV (P) Limited raised money from bulk advertisement agreements. He also deposed about the role of P. Amirtham in Kalaignar TV (P) Limited. He proved his statements and documents Ex PW 21/A to Q.

119. PW 22 is Sh. Surendra Mohan Prasad, Assistant General Manager, Oriental Bank of Commerce, Mumbai. He deposed about account No. 05211011000957 of M/s Dynamix Realty, account No. 05211131002039 of Cineyug Films (P) Limited, and account No. 05211131001346 of Kusegaon Fruits and Vegetables (P) Limited, maintained in his branch. He also proved the documents of Dynamix Realty, Ex PW 22/A-1 to A-7; of Cineyug Films (P) Limited, Ex PW 22/A-8 to A-17; and of Kusegaon Fruits and Vegetables (P) Limited, Ex PW 22/A-18 to A-24. He also proved a certificate, Ex PW 22/A-25, relating to these documents. He also proved documents, Ex PW 22/B to P, about various transactions, which took place between the three entities. He also deposed that all the three accounts are still operative and are being operated by the respective parties.

120. PW 23 is Sh. Navil Kapur, Under Secretary, Ministry of Information and Broadcasting. He deposed that this Ministry

grants licences for uplinking and downlinking to TV channels, which facilitates broadcasting and distribution of content on TV channels. The file relating to Kalaingar TV (P) Limited in this regard is Ex PW 23/A and as per pages 151 and 152 of the file, Ex PW 23/B, Kalaingar TV (P) Limited is having permission for uplinking and downlinking from the Ministry. He further deposed that the guidelines in this regard were revised vide file Ex PW 23/C and a revised format was prepared for seeking relevant information from the TV channels. He further deposed that such information was furnished by Kalaingar TV (P) Limited through its officials Sh. T. Siva Subramanian, Statutory Auditor and Sh. G. Rajendran, Vice President (Finance), vide Ex PW 23/D and the name of the three directors of the company, as available at point X, are M. K. Dayalu @ Dayalu Ammal, Kanimozhi Karunanithi and Sharad Kumar.

121. PW 24 is Sh. Sourabh Kumar, Vice President (Finance), Citi Bank. He has deposed about account No. 0300548113 of Cineyug Films (P) Limited, maintained in Juhu Branch of the bank. He also proved various documents relating to this account, including the one showing Karim Morani as one of the directors of Cineyug Films (P) Limited, Ex PW 24/A-1 and A-2. He also proved various transactions, which took place from this account with Kusegaon Fruits and Vegetables (P) Limited and Kalaingar TV (P) Limited and also proved the documents relating thereto as Ex PW 24/A-3 to A-35 and B to D.

122. Thereafter prosecution evidence was closed.

STATEMENT OF ACCUSED UNDER SECTION 313 CRPC

123. On closure of prosecution evidence, statement of accused was recorded under Section 313 CrPC, in which each one of them denied the allegations against him/ her as false. Every accused claimed that he/ she has been falsely implicated in this case.

124. Out of the nineteen accused, only thirteen expressed their desire to lead evidence in their defence.

125. However, only six accused examined witnesses in their defence.

DEFENCE EVIDENCE

126. DW 1 is Sh. Humayun Ali Ahamed, Vice President (Operations), Kalaighnar TV (P) Limited. He has been examined for P. Amirtham. He deposed that he joined Kalaighnar TV (P) Limited in July 2007 as Vice President (Operations), on the asking of Sharad Kumar and used to report to Sharad Kumar, P. Amirtham, Chief Financial Officer, and Sh. Ramanaryanan. He also deposed that P. Amirtham does not know English. He also deposed that Kalaighnar TV (P) Limited is a popular channel in Tamil.

127. DW 2 is Sh. K. Umashankar, Manager (Finance), Kalaighnar TV (P) Limited. He has been examined for Kalaighnar TV (P) Limited. He deposed about transaction of Rs. 200 crore between Kalaighnar TV (P) Limited and Cineyug Films (P) Limited as a loan. He also deposed that it was an inter-corporate deposit. He also deposed that this amount was used by

Kalaignar TV (P) Limited in repaying loan and for purchase of movies. He also deposed that initially Cineyug Films (P) Limited wanted to purchase equity in Kalaignar TV (P) Limited. However, due to disagreement on valuation of Kalaignar TV (P) Limited, it did not happen and the amount was returned.

128. DW 3 is Sh. Chintan Ghelani, a practicing Chartered Accountant from Mumbai. He has been examined for Dynamix Realty. His firm is tax auditor for Dynamix Realty since 2006-07. He deposed that he did not find any anomaly in the financial records of Dynamix Realty. He also deposed that Dynamix Realty has been taking and giving loans, as and when required.

129. DW 4 is Dr. P. Gopal from Chennai. He has been examined for M. K. Dayalu. He has deposed that Dayalu Ammal is about 82 years old and suffers from multiple ailments, which are mostly age related like Dementia.

130. DW 5 is Sh. Jignesh Shah, Company Secretary, DB BKC Realtors (P) Limited. He has been examined for Mystical Construction (P) Limited (earlier known as M/s Nihar Constructions (P) Limited). He deposed that Nihar Constructions (P) Limited merged with Mystical Construction (P) Limited as per order dated 11.04.2014, Ex DW 5(A-19)/DA, passed by Hon'ble Bombay High Court. He also deposed that DB Realty Limited was incorporated on 08.01.2007 as a public limited company and that it has an oversight committee and any financial decision of and above the value of Rs. 20 crore is required to be approved by oversight committee. He also deposed that the transaction of Rs. 200 crore between Dynamix

Realty and Kusegaon Fruits and Vegetables (P) Limited was approved by oversight committee and it was commercially beneficial to Dynamix Realty as it had fetched good amount of interest income.

131. DW 6 is Sh. Mitesh Kurani, Chief Financial Officer (CFO) of Cineyug Media and Entertainment (P) Limited and has been examined for this accused. He deposed that the directors of the companies were not involved in day-to-day functioning of the company. He also deposed that the transactions between Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited on one side and Cineyug Films (P) Limited and Kalaignar TV (P) Limited on the other side were legal and conducted on business principles.

132. Thereafter, defence evidence was closed.

Final Arguments

133. I have heard the arguments at the bar in great detail and have carefully gone through the record.

134. It is submitted by Sh. Anand Grover, learned Sr. Advocate/ Spl. PP for ED, that for the favours shown by Sh. A. Raja to STPL in the matter of grant of UAS licences for thirteen service areas, illegal gratification of Rs. 200 crore was paid by DB group of companies, to which STPL also belongs, through its partnership firm Dynamix Realty. It is further submitted that a sum of Rs. 209.25 crore was transferred by Dynamix Realty to Kusegaon Fruits and Vegetables (P) Limited, a company controlled by Sh. Asif Balwa and Sh. Rajiv Agarwal, who were

also directors in the companies belonging to DB group and this transfer of money took place between 23.12.2008 to 11.08.2009. It is further submitted that no formal agreement was executed between Dynamix Realty and Kusegaon Fruits and Vegetables (P) Limited for the transaction. It is further submitted that out of this amount of Rs. 209.25 crore, a sum of Rs. 206.25 crore was transferred by Kusegaon Fruits and Vegetables (P) Limited to Cineyug Films (P) Limited. It is further submitted that out of this, a sum of Rs. 6.25 crore was transferred for the purpose of acquiring 49% equity in Cineyug Films (P) Limited. It is further submitted that there was no underlying agreement between the two companies. It is further submitted that despite holding 49% equity of Cineyug Films (P) Limited, Kusegaon Fruits and Vegetables (P) Limited did not appoint any representative on its board. It is further submitted that Cineyug Films (P) Limited transferred a sum of Rs. 200 crore to Kalaignar TV (P) Limited, purportedly for buying equity in it.

135. It is further submitted that pursuant to registration of FIR by the CBI, an arrangement was made between Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited, whereby the transfer of Rs. 200 crore was shown against optionally convertible redeemable debentures, issued by Cineyug Films (P) Limited to Kusegaon Fruits and Vegetables (P) Limited. It is also submitted that a purported Share Subscription and Shareholder's agreement dated 19.12.2008 was also executed between Cineyug Films (P) Limited and

Kalaignar TV (P) Limited, which indicated that the money transferred would be treated as loan if no agreement was reached between the two companies on the valuation of Kalaignar TV (P) Limited. It is further submitted that a Subscription and Shareholder's Agreement dated 27.01.2010 was also executed between Cineyug Films (P) Limited and Kusegaon Fruits and Vegetables (P) Limited.

136. It is further submitted that numerous other documents were also executed by these entities like share pledge agreement, ICD agreements etc. It is further submitted that when Sh. A. Raja was summoned by CBI for interrogation, the aforesaid amount was returned by Kalaignar TV (P) Limited to Cineyug Films (P) Limited, and by Cineyug Films (P) Limited to Kusegaon Fruits and Vegetables (P) Limited and by Kusegaon Fruits and Vegetables (P) Limited to Dynamix Realty. It is further submitted that both onward and return transactions took place in quick succession at great speed, indicating that the transactions were of dubious nature. It is further submitted that all these acts were committed by these entities to conceal the transfer of Rs. 200 crore of illegal gratification, meant for parking in Kalaignar TV (P) Limited, by giving it a colour of regular business transaction. It is further submitted that this amounts to an act of layering of proceeds of crime by distancing the ill-gotten money from its source. It is further submitted that the accused persons involved in the transfer of Rs. 200 crore, both ways, committed an offence of money-laundering as the tainted money was shown to be untainted by projecting it as a

regular business transaction. The learned Sr. PP also invited my attention to the role of each entity as well as each accused by referring to the allegations as well as the evidence led on record. The evidence led on record has been extensively read at the bar to emphasize the fact that the transfer of Rs. 200 crore of illegal gratification and return thereof constituted an act of money-laundering and each accused and entity is responsible for that and thus, guilty of the offence of money-laundering. It is further submitted that the documents were created ex-post by these entities to project the transactions as regular commercial transactions. It is repeatedly submitted that the proceeds of crime, that is, money obtained as illegal gratification for the favours shown by Sh. A. Raja to STPL, were projected as untainted one. My attention has been invited to various provisions of the Act, deposition of witnesses, documents and case law in detail for emphasizing that each accused is guilty of the commission of the offence of money-laundering.

137. On the other hand, the defence argued that the transactions between the four entities were regular business transactions. It is submitted that the documents executed between entities are genuine one and were executed in the ordinary course of business. It is further submitted that there is no material on record indicating that the aforesaid amount of Rs. 200 crore was illegal gratification and had any link with Sh. A. Raja. It is further submitted that when the amount itself was not illegal gratification, there is no question of there being any proceeds of crime. It is further submitted that when there was

no proceeds of crime, there is no question of any money-laundering. It is repeatedly submitted that the amount was returned by Kalaignar TV (P) Limited as the deal for acquisition of its equity by Cineyug Films (P) Limited fell through. It is the case of the defence that there is absolutely no legally admissible evidence in support of the prosecution version. It is the case of the defence when there is no evidence showing generation of “proceeds of crime”, there is no question of offence of money-laundering. It is the case of the defence that instant case is a case of no evidence. Deposition of witnesses was read extensively at the bar.

138. Both parties have invited my attention to the voluminous record of the case as well as to relevant legal provisions for months together.

139. Apart from the facts and evidence, learned counsel for the parties liberally invited my attention to numerous case law.

140. Sh. Anand Grover, learned Sr. Advocate/ Spl. PP for ED, invited my attention to the following case law:

- 1) **B. Rama Raju Vs. Union of India and Others, 2011 SCC OnLine AP 152;**
- 2) **M. Shobana Vs. The Assistant Director, Directorate of Enforcement, Government of India, MANU/TN/1994/2013;**
- 3) **Radha Mohan Lakhotia Vs. The Deputy Director, PMLA, Directorate of Enforcement, 2010 SCC OnLine Bom 1116;**
- 4) **Hari Narayan Rai Vs. Union of India, 2010 SCC OnLine Jhar 1066;**
- 5) **Bhagirath Kanoria and Others Vs. State of M. P., (1984) 4 SCC 222;**

- 6) Ramesh Chandra Mehta Vs. State of West Bengal, AIR 1970 SC 940;
- 7) K. I. Pavunny Vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin, (1997) 3 SCC 721;
- 8) Ram Singh Vs. Central Bureau of Narcotics, (2011) 11 SCC 347;
- 9) Standard Chartered Bank and Others Vs. Directorate of Enforcement and Others, (2005) 4 SCC 530;
- 10) Iridium India Telecom Limited Vs. Motorola Incorporated and Others, (2011) 1 SCC 74;
- 11) R Vs. K, [2006] B. C. C. 362;
- 12) Kalwa Devadattam and Others Vs. The Union of India and Others, AIR 1964 SC 880;
- 13) Sunil Siddharthbhai Vs. Commissioner of Income Tax, Ahmedabad, Gujarat, (1985) 4 SCC 519;
- 14) R. Janakiraman Vs. State represented by Inspector of Police, CBI, SPE, Madras, (2006) 1 SCC 697;
- 15) Union of India Vs. Hassan Ali Khan and Another, (2011) 10 SCC 235;
- 16) Hiten P. Dalal Vs. Bratindranath Banerjee, (2001) 6 SCC 16;
- 17) M. S. Narayana Menon alias Mani Vs. State of Kerala and Another, (2006) 6 SCC 39; and
- 18) Gurdip Singh Vs. State of Punjab, (2013) 10 SCC 395.

141. Sh. Pinaki Misra, learned Sr. Advocate for Karim Morani, invited my attention to the following case law:

1. Jafar Mohammed Hasanfatta and Ors. Vs. Deputy Director and Ors., MANU/GJ/0219/2017;
2. T. Shankar Prasad Vs. State of A. P., (2004) 3 SCC 753;
and
3. Obulapuram Mining Company Pvt. Ltd. and Ors. Vs. Joint Director, Directorate of Enforcement, Government of India and Ors., MANU/KA/0545/2017.

142. Sh. K. Shanmugasundaram, learned Sr. Advocate for M. K. Dayalu, P. Amirtham and Kalaignar TV (P) Limited, invited

my attention to the following case law:

1. Jafar Mohammed Hasanfatta and Ors. Vs. Deputy Director and Ors., R/CR. RA/926/2016 (Gujarat High Court);
2. Ajanta Merchants Pvt. Ltd. Vs. Directorate of Enforcement, 2015 SCC OnLine Del 8659;
3. Obulapuram Mining Company Pvt. Ltd. Vs. Joint Director, Directorate of Enforcement and Ors., Writ Petition No. 5962 of 2016, Karnataka High Court (DOD 13.03.2017);
4. Maksud Saiyed Vs. State of Gujarat and Others, (2008) 5 SCC 668;
5. State of M. P. Vs. Mukesh and Others, (2006) 13 SCC 197; and
6. State of Maharashtra Vs. Kamal Ahmed Mohammed Vakil Ansari and Others, (2013) 12 SCC 17.

143. Ms. Rebecca John, learned Sr. Advocate for Kanimozhi Karunanithi, invited my attention to the following case law:

1. M. S. Madhusoodhanam and Another Vs. Kerala Kaumudi (P) Ltd and Others, (2004) 9 SCC 204;
2. Anita Malhotra Vs. Apparel Export Promotion Council and Another, (2012) 1 SCC 520;
3. Rama Devi and Another Vs. Delhi Administration, 1985 SCC OnLine Del 408;
4. Rahim Khan Vs. Khurshid Ahmed and Others, (1974) 2 SCC 660;
5. Jamuna Chaudhary and Others Vs. State of Bihar, (1974) 3 SCC 774;
6. Babubhai Vs. State of Gujarat and Others, (2010) 12 SCC 254;
7. Ashish Batham Vs. State of M. P., (2002) 7 SCC 317;
8. Bacha F. Guzdar, Bombay Vs. Commissioner of Income Tax, Bombay, AIR 1955 SC 74;
9. National Small Industries Corporation Ltd. Vs. Harmeet Singh Paintal and Another, (2010) 3 SCC 330;
10. Maksud Saiyed Vs. State of Gujarat and Others, (2008)

- 5 SCC 668;
11. N. Rangachari Vs. Bharat Sanchar Nigam Ltd., (2007) 5 SCC 108;
 12. Suresh Batra & Others Vs. Securities & Exchange Board of India, ILR (2011) V Delhi 334;
 13. Mohd. Faizan Ahmad alias Kalu Vs. State of Bihar, (2013) 2 SCC 131;
 14. C. Chenga Reddy and Others Vs. State of A. P., (1996) 10 SCC 193; and
 15. Svenska Handelsbanken Vs. M/s Indian Charge Chrome and Others, AIR 1994 SC 626.

144. Sh. Majid Memon, learned Advocate for Vinod Goenka, invited my attention to the following case law:

1. Lal Shah Baba Dargah Trust Vs. Magnum Developers and Others, Civil Appeal No. 14565 of 2015 (SC);
2. P. Satyanarayana Murthy Vs. The Dist. Inspector of Police and Anr., Criminal Appeal No. 31 of 2009 (SC);
3. State Vs. Dindayal Agarwala and Ors., 1991 CriLJ 2786;
4. State of Madras Vs. C. V. Parekh and Anr., AIR 1971 SC 447;
5. Gunmala Sales Private Limited Vs. Anu Mehta & Ors., Criminal Appeal No. 2228 of 2014 (SC);
6. Jafar Mohammed Hasanfatta and Ors. Vs. Deputy Director and Ors., R/CR. RA/926/2016 (Gujarat High Court);
7. Director General, ESI & Anr. Vs. T. Abdul Razak etc., 1996 SCC (4) 708;
8. Chirag Harendrakumar Parikh Vs. State of Gujarat, R./CR. MA/17326/2015 (Gujarat High Court);
9. Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore, (SC), DOD 15.04.1999;
10. Shanti Devi Vs. Union of India and Ors., 73 (1998) DLT 477; and
11. Attorney General for India Vs. Amratlal Prajivandas, 1994 SCC (5) 54.

145. Sh. Manu Sharma, learned Advocate for A. Raja,

invited my attention to the following case law:

1. Shaikh Zahid Mukhtar Vs. State of Maharashtra and Ors., 2016 SCC OnLine Bom 2600;
2. Kali Ram Vs. State of Himachal Pradesh, (1973) 2 SCC 808;
3. Babu Vs. State of Kerala, (2010) 9 SCC 189;
4. Haricharan Kurmi and Anr. Vs. State of Bihar, AIR 1964 SC 1184;
5. Suresh Budharmal Kalani Vs. State of Maharashtra, (1998) 7 SCC 337; and
6. State of Delhi Vs. Shri Ram Lohia, 1960 CriLJ 679.

146. Sh. Vijay Aggarwal, learned Advocate for Shahid Usman Balwa, Asif Balwa, Rajiv Agarwal, Kusegaon Realty (P) Limited, Dynamix Realty, DB Realty Limited and Mystical Construction (P) Limited (earlier known as Nihar Constructions (P) Limited), invited my attention to the following case law:

1. Rajeshwar Vs. State of U. P., 1998 (4) Crimes 26;
2. M/s Obulapuram Mining Company Pvt. Ltd. Vs. Joint Director, Directorate of Enforcement and Others, Writ Petition No. 5962 of 2016 (GM-MM-C), High Court of Karnataka;
3. Whether This Case Involves A..... Vs. Deputy Director & on 16 February, 2017, R/CR. RA/926/2016.
4. Harpal Singh @ Chhota Vs. State of Punjab, Criminal Appeal No. 2539 of 2014 (SC);
5. V. M. Mathew Vs. V. S. Sharma and Others, (1995) 6 SCC 122;
6. Om Parkash Jain Vs. Union of India & Ors., 2000 (55) DRJ 10;
7. Tarasingh & Others Vs. Surat @ Guddu & Another, 2011 (4) CGLJ 505;
8. Talasila Suresh Vs. Naarla Srinivasa Chakravarthi and Others, AIR 2013 AP 98;
9. Haricharan Kurmi Vs. State of Bihar, AIR 1964 SC 1184;
10. Bal Gangadhar Tilak and Others Vs. Shrinivas Pandit

- and Another, ILR 1915 [39] 411;
11. MCD Vs. State of Delhi and Another, (2005) 4 SCC 605;
 12. Jethamal Pithaji Vs. The Assistant Collector of Customs, Bombay and Another, (1974) 3 SCC 393;
 13. Ripen Kumar Vs. Department of Customs, 2000 (7) AD (Delhi) 862;
 14. R Vs. GH (Respondent), [2015] UKSC 24;
 15. Malkiat Singh and Another Vs. The State of Punjab, 1969 (1) SCC 157;
 16. S. M. S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Anr., 2005 III AD (Cr.) SC 593;
 17. Pepsi Food Ltd. and Another Vs. Special Judicial Magistrate and Others, 1998 SCC (Cri) 1400;
 18. Pooja Ravinder Devidasani Vs. State of Maharashtra and Another, (2014) 16 SCC 1;
 19. Sudeep Jain Vs. M/s ECE Industries Ltd., 2013 (201) DLT 461;
 20. Raminder Kaur Narula & Anr. Vs. M/s Prem Chemicals P. Ltd., Criminal Misc. Case 2690/2004 (DHC);
 21. N. K. Wahi Vs. Shekhar Singh & Ors., 2007 [1] JCC [NI] 112;
 22. Katta Sujatha (Smt.) Vs. Fertilizers & Chemicals Travancore Ltd. and Another, 2003 SCC (Cri) 151;
 23. Bharat Barrel and Drum Manufacturing Company Vs. Amin Chand Payrelal, AIR 1999 SC 1008;
 24. Kundan Lal Vs. Custodian, Evacuee Property, AIR 1961 SC 1316;
 25. N. Chirag Travels (P) Ltd. Vs. Ashwani Kumar and Anr., 152 (2008) DLT 637;
 26. Pepsico India Holdings Private Limited Vs. Food Inspector and Another, (2011) 1 SCC 176;
 27. Browne Vs. Dunn, (1894) 6 R.] 67;
 28. State of U. P. Vs. Nahar Singh (Dead) and Others, (1998) 3 SCC 561;
 29. Ramanlal Bhogilal Shah and Another Vs. D. K. Guha and Others, 1973 SCC (1) 696;
 30. Tofan Singh Vs. State of Tamil Nadu, (2013) 16 SCC 31;
 31. Nooraga Vs. State of Punjab and Another, 2008 [3] JCC [Narcotics] 135;

32. State of Gujarat Vs. Shyamlal Mohanlal Choksi, AIR 1963 Gujarat 178;
33. Amin Shariff Vs. Emperor, AIR 1934 Cal 580;
34. Nanoo Sheikh Ahmed Vs. Emperor, AIR 1927 Bom 4;
35. Vanamala Jagadeswaraiah and Another Vs. Dy. Commissioner, Customs & Central Excise, Hyderabad, 2001 CriLJ 1590;
36. Harichand Kurmi and Another Vs. State of Bihar, AIR 1964 SC 1184;
37. Gurucharan Singh Vs. Union of India and Others, WP (Crl) 307/2016 (DHC);
38. Rakesh Manekchand Kothari Vs. Union of India, Special Criminal Application (Habeas Corpus) No. 4247 of 2015;
39. Vijay Madan Lal Choudhary and Others Vs. Union of India and Others, 2016 [3] MPLJ 664;
40. Kanshi Ram Vs. State, 86 (2000) DLT 609;
41. Surinder Kumar and Others Vs. State, 64 (1996) DLT 620;
42. Ajit Singh Vs. State, 39 (1989) DLT 468;
43. State of West Bengal and Others Vs. Swapan Kumar Guha and Others, (1982) 1 SCC 561;
44. Sakiri Vasu Vs. State of U. P. and Others, (2008) 2 SCC 409;
45. H. N. Rishbud and Inder Singh Vs. State of Delhi, AIR 1955 SC 196;
46. Ritesh Sinha Vs. State of Uttar Pradesh and Another, (2013) 2 SCC 357;
47. State of U. P. Vs. Durga Prasad, (1975) 3 SCC 210;
48. State of Delhi Vs. Shri Ram Lohia, 1960 CriLJ 679;
49. Ram Kishan Singh Vs. Harmit Kaur and Another, 1972 CriLJ 267; and
50. Babulal Vs. State, 1977 CriLJ 2008.

147. Sh. Balaji Subramanian, learned Advocate for Sharad Kumar, invited my attention to the following case law:

1. Jafar Mohammed Hasanfatta and Ors. Vs. Deputy Director and Ors., R/CR. RA/926/2016 (Gujarat High Court); and

2. T. Shankar Prasad Vs. State of A. P., (2004) 3 SCC 753.

148. Sh. Vijay Sondhi, learned Advocate for Swan Telecom Private Limited (Now Etisalat DB Telecom Private Limited), invited my attention to the following case law:

1. Obulapuram Mining Company Pvt. Ltd. and Ors. Vs. Joint Director, Directorate of Enforcement, Government of India and Ors., MANU/KA/0545/2017 (DOD 13.03.2017);
2. Obulapuram Mining Company Pvt. Ltd. and Ors. Vs. Joint Director, Directorate of Enforcement, Government of India and Ors., MANU/KA/0545/2017 (DOD 22.03.2017);
3. Binod Kumar Sinha @ Binod Kumar Vs. State of Jharkhand, MANU/JH/0089/2013;
4. B. S. Yeddyurappa Vs. The State of Karnataka and Ors., MANU/KA/0011/2016;
5. M/s EMTA Coal Limited and Another Vs. M/s Karnataka Power Corporation Limited, ILR 2016 KAR 2025; and
6. Jafar Mohammed Hasanfatta and Ors. Vs. Deputy Director and Ors., MANU/GJ/0219/2017.

149. In rebuttal, Sh. Anand Grover, learned Sr. Advocate/Spl. PP for ED, invited my attention to the following case law:

1. M. Narayanan Nambiar Vs. State of Kerala, AIR 1963 SC 1116;
2. C. K. Damodaran Nair Vs. Govt. of India, (1997) 9 SCC 477;
3. Ram Krishan and another Vs. State of Delhi, AIR 1956 SC 476;
4. C. I. Emden Vs. State of UP, AIR 1960 SC 548;
5. Mohmoodkhan Mahboobkhan Pathan Vs. State of Maharashtra, (1997) 10 SCC 600;
6. Shiv Nandan Dixit Vs. State of UP, (2003) 12 SCC 636;

7. R. Venkatkrishnan Vs. CBI, (2009) 11 SCC 737;
8. M. Narsinga Rao Vs. State of AP, (2001) 1 SCC 691;
9. Girja Prasad (dead) by LRs Vs. State of MP, (2007) 7 SCC 625;
10. K. S. Panduranga Vs. State of Karnataka, (2013) 3 SCC 721;
11. C. Chandrasekaraiah Vs. State of Karnataka, (2015) 13 SCC 802;
12. Sailendra Nath Bose Vs. State of Bihar, AIR 1968 SC 1292;
13. In Re: P. Chelladurai, (1969) 1 MLJ 508;
14. Runu Ghosh Vs. CBI, 2011 SCC OnLine Del 5501;
15. B. Rama Raju Vs. Union of India and others, 2011 SCC OnLine AP 152;
16. M. Shobana Vs. The Assistant Director, Directorate of Enforcement, Government of India, 2013 (4) MLJ (Cri) 286;
17. Radha Mohan Lakhotia Vs. The Deputy Director, PMLA, 2010 SCC OnLine Bom 1116;
18. G. Srinivasan Vs. The Chairperson, Adjudicating Authority, PMLA, (2012) 1 MLJ 419;
19. Gautam Kundu Vs. Directorate of Enforcement, (2015) 16 SCC 1;
20. Anand Chauhan Vs. Directorate of Enforcement, 2017 SCC OnLine Del 7790;
21. Karam Singh & others Vs. Union of India & others, 2015 SCC OnLine P&H 19739;
22. Hari Narayan Rai Vs. Union of India and others, 2010 SCC OnLine Jhar 1066;
23. A. K. Samsuddin Vs. Union of India and others, 2016 SCC OnLine Ker 24144;
24. Om Prakash Daulat Ram Nogaja Vs. Deputy Director, ED, First Appeal No. 967 of 2010, Bombay HC, dated 29th September 2011;
25. Ram Krishna Bedu Rane Vs. State of Maharashtra, (1973) 1 SCC 366;
26. R. Janakiraman Vs. State, represented by Inspector of Police, CBI, (2006) 1 SCC 697;
27. Obulapuram Mining Company Pvt. Ltd and others Vs. Joint Director, Directorate of Enforcement, Writ

- Petition Nos. 5962, 11442 and 11440-11441 of 2016 (GM-MM-C) before High Court of Karnataka, dated 13th March 2017;
28. Gurcharan Singh Vs. Union of India, 2016 SCC OnLine Del 2493;
 29. Prakash Singh Badal and another Vs. State of Punjab and others, (2007) 1 SCC 1;
 30. R Vs. GH, [2015] UKSC 24;
 31. State of Punjab Vs. Barkat Ram, AIR 1962 SC 276;
 32. Badaku Joti Svant Vs. State of Mysore, AIR 1966 SC 1746;
 33. Ramesh Chandra Mehta Vs. State of West Bengal, AIR 1970 SC 940;
 34. State of UP Vs. Durga Prasad, (1975) 3 SCC 210;
 35. Balkishan A. Devidayal Vs. State of Maharashtra, (1980) 4 SCC 600;
 36. Raj Kumar Karwal Vs. Union of India and others, (1990) 2 SCC 409;
 37. Directorate of Enforcement Vs. Deepak Mahajan and another, (1994) 3 SCC 440;
 38. Percy Rustomji Basta Vs. State of Maharashtra, 1971 (1) SCC 847;
 39. K. I. Pavunny Vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin, (1997) 3 SCC 721;
 40. Kanhiyalal Vs. Union of India, (2008) 4 SCC 668;
 41. Girish Raghunath Mehta Vs. Inspector of Customs and another, 2016 SCC OnLine SC 931;
 42. Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro Industries Ltd. and others, (2000) 7 SCC 53;
 43. Jethamal Pithaji Vs. The Assistant Collector of Customs, Bombay and another, (1974) 3 SCC 393;
 44. Nishi Kant Jha Vs. The State of Bihar, 1969 (1) SCC 347; and
 45. Gulam Hussain Shaikh Chougule Vs. S. Reynolds, Supdt. Of Customs, Marmgoa, (2002) 1 SCC 155.

150. I may note that I have carefully gone through the entire case law cited at the bar by the parties.

Relevant provisions of law

151. Let me take note of relevant provisions of the Act as applicable to the facts of the case.

152. Section 2(1)(u) defines “proceeds of crime” as under:

“Proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property”.

153. Section 2(1)(v) defines “property” as under:

“property’ means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located”

154. Section 2(1)(x) defines “schedule” as under:

“Schedule’ means the Schedule to this Act”

155. Section 2(1)(y) defines “scheduled offence” as under:

“scheduled offence’ means-

(i) the offences specified under Part A of the Schedule; or

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or

(iii) the offences specified under Part C of the Schedule”

156. Section 3 defines the offence of “money-laundering”

as under:

“Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.”

157. Section 4 provides punishment for money-laundering and reads as under:

“Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

.....”

158. There is a schedule attached to the Act. It contains a list of various enactments and the offences created thereunder, which are to be treated as scheduled offences. Prevention of Corruption Act, 1988 is one of the Acts mentioned in the schedule. Section 7 of this Act pertains to public servant taking gratification other than legal remuneration in respect of an official act and Section 13 relates to criminal misconduct by a public servant. Both of these offences are thus scheduled offences as per Section 2(1)(y) of the Act extracted above.

159. In brief, “proceeds of crime” is a property derived by any person as a result of criminal activity relating to a scheduled offence. Anyone who directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually

involved in any process or activity connected with proceeds of crime, including its concealment, possession, acquisition or use and projecting or claiming it as untainted property commits the offence of money-laundering. Thus, for commission of an offence of money-laundering, there should be a scheduled offence and out of that offence, the accused must have derived or obtained proceeds of crime and having obtained such proceeds, must have projected or claimed it as untainted.

160. Thus, “Proceeds of crime” is the essence and an indispensable element of the offence of money-laundering. It is the core constituent of the offence. Without the existence of proceeds of crime, there cannot be any commission of an offence of money-laundering. It is only when “proceeds of crime” is projected or attempted to be projected as untainted property, the offence of money- laundering arises.

161. In brief, the ingredients of money-laundering are as under:

- (a) Commission of a scheduled offence;
- (b) “Proceeds of crime”, that is, property, is derived or obtained by the accused as a result of criminal activity relating to such scheduled offence;
- (c) Such “proceeds of crime” is projected as untainted property.

162. In nutshell, the existence of a scheduled offence and emergence of “proceeds of crime” therefrom, is sine qua non for the existence of the offence of money-laundering. In an

authority reported as M. Shobana Vs. The Assistant Director, Directorate of Enforcement, Government of India, MANU/TN/1994/2013, Hon'ble High Court of Madras observed in paragraphs 28 to 32 as under:

“28. From the aforesaid definition of 'Offence of Money-Laundering' mentioned in Section 3, the terms 'Money Laundering' can be said to be any process or activity connected with the proceeds of crime and projecting or claiming proceeds of crime as an untainted property. In plain language, it can safely be stated that 'Money-Laundering' is projection of the proceeds of crime as an untainted property.

29. Also that, the words 'Proceeds of Crime' are defined under Section 2(u) of the Act. 'Proceeds of Crime' means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property.

30. The 'Offence of Money-Laundering' relates to proceeds of crime derived from a scheduled offence. Scheduled Offences are mentioned under Part A of the schedule of the Prevention of Money-Laundering Act, 2002 and (2) for offences specified under Part C of the Schedule viz., having cross border implications etc.

31. Indeed, the 'Offence of Money-Laundering' as defined under the Prevention of Money-Laundering Act, centres around the 'Proceeds of Crime'.

32. Money Laundering is the illegal practice of filtering 'Dirty Money' or Ill-gotten gains through series of transactions until the funds are 'clean' or appear to be the proceeds from legal activities (vide U.S. Comptroller of Currency September 2000).”

Thus, offence of money-laundering arises from “proceeds of crime” derived from a scheduled offence.

163. What is case of the prosecution? Its case is that Sh. A. Raja received illegal gratification of Rs. 200 crore for the favours shown by him to STPL in the matter of grant of thirteen UAS licences and allocation of spectrum in the year 2008-09. It is the case of the prosecution that illegal gratification of Rs.200 Crore was paid by companies of DB Group through partnership firm Dynamix Realty, Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited, which was ultimately parked in Kalaignar TV (P) Limited. It is the case of the prosecution that subsequently on the registration of criminal case by CBI and arrest of Sh. A. Raja, this amount was returned and this was done by executing several ex-post documents to project this amount as untainted, that is, regular commercial transactions. Hence, this amount of Rs. 200 crore was derived from a criminal activity relating to a scheduled offence and, as such, constituted “proceeds of crime” and these “proceeds of crime” were projected, both during transfer from Dynamix Realty to Kalaignar TV (P) Limited and vice versa, as genuine business transactions and these acts constituted an offence of money-laundering by all the accused involved in the case.

164. I may note that I have deliberately quoted in extenso the contents of the complaint to emphasize that the instant case is almost entirely based on the CBI charge sheet, particularly in respect of generation of “proceeds of crime”. For ready

reference, paragraphs 51 and 68, referred to above, are extracted as under:

“51. Investigation under the Act, inter alia, revealed that proceeds of crime to the tune of Rs. 200 crore was paid by Dynamix Realty to KTV through Kusegaon Fruits and Vegetables (P) Limited and Cineyug Films (P) Limited. This payment was illegal gratification for and on behalf of A. Raja in lieu of illegal favours given to STPL by A. Raja. These actions of A. Raja constitute criminal acts under the provisions of IPC and PC Act as stated in the charge sheets filed by the CBI. The individuals and the firms/ companies involved in the transfer of Rs. 200 crore are inter connected.

68. It is revealed in the investigation that, simultaneously, a sum of Rs. 200 crore was arranged by the owners and controllers of STPL and transferred the same to KTV, using various companies as carriers. The amount of Rs. 200 crore is the illegal gratification in lieu of allotment of UAS licence to STPL by A. Raja and others, as revealed in the charge sheet filed by the CBI.”

165. Perusal of these two paragraphs reveal that alleged “proceeds of crime” were generated for the favours allegedly shown by Sh. A. Raja to STPL in the matter of grant of thirteen UAS licences. Thus, the entire case hinges upon “proceeds of crime” of Rs. 200 crore, which were generated when DB Group paid an illegal gratification of Rs. 200 crore to Sh. A. Raja, which was parked in Kalaignar TV (P) Limited.

166. However, vide my separate judgment dated today, in the case of scheduled offence titled CBI Vs. A. Raja and others, all accused have been ordered to be acquitted. In view of

acquittal of accused in the case relating to scheduled offence, there are no “proceeds of crime”. “Proceeds of crime” is the foundational fact for the offence of money-laundering. Since there are no “proceeds of crime”, there can be no offence of money-laundering, as nothing remains to be laundered. Thus, the very base of the instant case is gone and the alleged offence stands wiped out.

167. Since there are no “proceeds of crime”, in my humble opinion, there is no need to discuss other issues based on evidence led by the parties, as that would amount to an exercise, not only in speculation but also in futility, as the very basic fact required for constitution of an offence of money-laundering, that is, “proceeds of crime”, is knocked out.

168. Accordingly, all accused are entitled to be acquitted and are acquitted.

Disposal of property

169. In the instant case, as per para 5.2 of the complaint, property worth Rs. 223.55 crore of DB group of companies and its associates has been attached by ED. Attachment Order, Ex PW 2/A, shows the attached properties. However, in view of the acquittal of the accused, necessary order is also required to be passed relating to attached properties.

170. Let me take note of the legal position on this issue.

171. Clauses 5 & 6 of Section 8 of the Act deals with disposal of property, both in case of conviction as well as acquittal by the Special Court. These clauses read as under:

“(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.”

(All underlinings by me for supplying emphasis)

Thus, in terms of sub-clause (6) of Section 8, as noted above, in case Special Court finds that no offence of money-laundering has taken place, it shall order release of attached properties to person(s) entitled to receive it.

I may add that the prosecution argued that even in case of acquittal, under Clause 6 referred to above, Special Court is empowered to confiscate the property, as the word used in the clause is “finds” and not “acquittal”. It is the case of the prosecution that use of word “finds” in contrast to “acquittal” in the clause gives power to the Court to order confiscation of the attached property, even in case of acquittal of accused. However, I do not find any merit in the submission as word “find” refers to a conclusive decision of not guilty, amounting to acquittal of the accused. For ready reference, I may note that Section 248 of CrPC, heading of which is “Acquittal or Conviction” also uses the words “finds the accused not guilty, he

shall record an order of acquittal”. Thus, the word “finds” refers to conclusive decision of “acquittal” or “conviction” and not something in between which empowers Court to order confiscation of property even in case of acquittal. The submission of the prosecution is contrary to law.

172. In terms of the above legal position, properties attached in the instant case by the Enforcement Directorate, are ordered to be released to the persons from whom the same were attached, after the time for filing of appeal is over.

Regarding Bail Bonds

173. The bail bonds of the accused are hereby cancelled and sureties stand discharged. Documents, if any, of the sureties be returned to them after cancellation of endorsement thereon, if any.

Appearance before Hon'ble Appellate Court

174. In terms of Section 437A CrPC, each accused is directed to furnish bail bond in the sum of Rs. Five lac with one surety in the like amount for appearance before the Hon'ble Appellate Court as and when required.

175. If there is any document seized from any person during investigation, the same be also returned to the person concerned after the time for filing of appeal is over.

176. File be consigned to the **Record Room**.

Announced in open Court
today on 21.12.2017

(O.P. Saini)
Spl. Judge/CBI(04)/ PMLA
(2G Spectrum Cases)
New Delhi