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CHANDA KOCHHAR & ICICI BANK FRAUD AND ROLE OF REGULATING AGENCIES

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ABSTRACT

In recent years the number of scams have increased quite alarmingly across all banking sectors (public, private, co-operative) in India and has become a cause of concern. It's not only affecting our economy but also our country's image as a world power. Starting from Vijay Mallya scam to Nirav Modi and then shocking news circulated in March 2018 regarding the ICICI bank fraud. Arvind Gupta the whistleblower who highlighted ICICI fraud case by sending a letter to our honourable prime minister in 2016 but it didn't attract much attention and in 2018 when it gained media attention the whole case came before us. This paper, discuss the whole case of ICICI bank fraud and how the investigation was done by different agencies and liabilities of the parties involved and the consequences thereto. Firstly this research paper highlights the issue regarding the development of the whole case and factual matrix. Then discuss the various agencies involving in the investigation of this case including CBI, ED, SFIO, and SEBI. Further, analyse the whole case in the light of different provisions of various acts including IPC and PMLA acts. Then put light on instances such as conflict of interest, related party transactions and offence of cheating. Finally discussed the consequences of parties involved in the scam and lead to the conclusion where analyzed the case "**Chanda Deepak Kochhar v. ICICI Bank Ltd**"¹ and liabilities of parties involved under various acts.

KEY WORDS- ICICI Bank scam, Cheating, Related Party Transaction, Money Laundering, Conflict of interest

¹ [2020 SCC Online Bom 374](#)

I. INTRODUCTION

Lately, cases of banking frauds and scams have routinely been elucidated in India. Despite the fact that banking scams in India have regularly been treated as cost of business progression, after the liberalization the recurrence, unpredictability and cost of banking frauds have expanded complex coming about in an intense reason for worry for controllers, for example, the Reserve Bank of India (RBI). RBI, the controller of banks in India, stated fraud as “A deliberate act of omission or commission by any person, carried out in the course of a banking transaction or in the books of accounts maintained manually or under computer system in banks, resulting into wrongful gain to any person for a temporary period or otherwise, with or without any monetary loss to the bank”².

Today, bank scams or frauds have taken every conceivable structure and are predominant in each feature of banking. There is a present requirement for banks to consistently remain alive with regard to danger of scams or frauds, construct solid frameworks that can shield, pre-empt scams, regularly monitors and survey the effectiveness of such preventive frameworks. To prevail with regards to controlling frauds, banks should be proactive and pre-emptive. Many banks, across private and public sector, have seen a significant spike in number of fraud cases in 2019-20 and the quantum of money involved, indicating that challenges on risk management continues, for the industry and the banking regulator, in a big way. This is despite banks being hit by several instances of frauds in recent years.

Recently the Reserve Bank of India (RBI) has been strictly regulating guideline and oversight of banks to [prevent scams and financial inconsistencies, more stress given to field level management and making a different unified cadre in the central bank. “The cadre was formed on November 1 last year to strengthen and consolidate the supervision functions, presently scattered across different departments. But,](#) this also creates issues as there is a difference of opinion between top management and officers about the effectiveness of the new division. Officers

² Available at https://rbi.org.in/scripts/BS_SpeechesView.aspx?Id=826 visited on December 23,2020

believe the existing infrastructure needs to be strengthened through training instead of creating a new cadre”³.

ICICI bank scams in which big names involved as Ms Chanda Kochhar, videocon groups MD and many more stuck the whole world as this is matter of internal strategies for approval of loans and personal benefits too. This case is at investigating stage and various agencies working on this whole case. This research paper focuses on ICICI bank scam and role of different regulating agencies and various related issues.

1.1 WHO IS CHANDA KOCHHAR?

In 1984 Chanda Kochhar joined ICICI Bank as a management trainee and she was 22 years old at that point of time. By the age of 47, she was appointed as CEO of ICICI bank. “She not only made history by becoming the first woman to lead an Indian bank but she also transformed the entire Indian retail banking industry”⁴.

She was an inspiration for the whole world and she awarded with numerous awards and accolades. Her award list includes:

| LIST OF AWARDS | YEAR |
|--|------|
| Padma Bhushan | 2011 |
| listed second in Fortune India’s list of “Most Powerful Women in Business” | 2014 |
| “Honorary Doctor of Laws degree from Carleton University in Canada in recognition of her pioneering work in the financial sector, effective leadership, and support for engaged business practices” ⁵ . | 2014 |
| Time’s “100 Most Influential People in the World” | 2015 |
| ranked 36th on the Forbes “World’s 100 Most Powerful Women” | 2015 |

³ Dinesh Unnikrishnan, *Bank fraud cases see a major spike in 2019-20: How prepared is the RBI?*, Available at <https://www.moneycontrol.com/news/business/bank-fraud-cases-see-a-major-spike-in-2019-20-how-prepared-is-the-rbi-5550861.html> visited on December 23, 2020

⁴ Available at <https://asiasociety.org/asia-game-changers/chanda-kochhar> visited on December 2, 2020

⁵ Id.

The term used for Chanda Kochhar quote unquote:

“For breaking the glass ceiling, transforming an industry, and reaching the masses”.

She was a mentor to the whole community of Indian women to believe in oneself and prove your worth beyond limits but what was shocking for the whole world when **ICICI Bank scam came in light and Ms Chanda Kochhar was one of the essential party involved in the whole scam.**

II. CASE FACTS AND CHRONOLGY

2.1 FACTUAL MATRIX OF THE CASE⁶ :

The **ICICI** (Industrial Credit and Investment Corporation of India) Bank CEO Chanda Kochhar misused her position as CEO for granting loans to Videocon groups and its related firm which ultimately support her family members. A complaint filed by an investor of ICICI Bank and Videocon groups to the different platform including prime minister's office and on the recommendations of PMO agencies started an investigation. According to the complaint filed by the Arvind Gupta⁷ who was the one of the investor, ICICI bank CEO Ms Chanda Kochhar in April 2012, approved suspicious loans to Videocon Group of companies of Rs.3900 crores and during that period Rs.325 crores was also transferred to her husband Deepak Kochhar's firm NuPower Renewable Private Limited.

“The complaint dated March 15, 2016, addressed to Prime Minister Narendra Modi and also a copy to Finance Minister Arun Jaitley and all investigating agencies, mentioning that Deepak Kochhar is the major shareholder of NuPower renewable private ltd and was formed on a 50-50 basis shareholding by Kochhar family members and Videocon Group family members. Around December 2008, Chanda Kochhar was also a shareholder of NuPower, while Joint Managing

⁶Available at https://www.pgurus.com/icici-bank-head-chanda-kochhar-and-husband-on-the-radar-of-probe-agencies-for-doubtful-loans-to-debt-ridden-videocon-group/#_ftn2 visited on December 3, 2020

⁷ He is the Whistleblower and also a shareholder of the Videocon group. He also called himself as stakeholder-activist. He examined all the public documents shared by the company and found the transaction of nu-power renewable, company promoted by Deepak Kochhar, her husband. This creates suspicion regarding the loan granting as quid pro quo.

Director of ICICI Bank Limited at that time period when her mentor K V Kamath was heading the bank”⁸.

In April 2012 the shares of Videocon group of Nu-power Renewables was completely transfer to Kochhar’s family and they were the only owner of that industries. After that, the ICICI bank grant loans to various companies belonging to Videocon industries ltd i.e. Rs 3,250 crore (the amount of loan).

The break-up of loan amount approved by ICICI bank to Videocon group in the tabular form given below:

| “Rupee Loan of Rs. 3,250 crore to the Promoters of Videocon Group by ICICI Bank”⁹ | |
|---|--------------------------------------|
| COMPANY’S NAME | Amount of loan in Rs. (Crore) |
| Trend Electronics Limited | 650 |
| Century Appliances Limited | 650 |
| Kail Limited | 650 |
| Value Industries Limited | 650 |
| Evans Fraser & Company India Limited | 650 |
| | 3,250 (Total amount of loan) |

⁸Available at <https://www.pgurus.com/corporate-governance-mr-narayana-murthy-mr-k-v-kamath-and-ndtv/> visited on December 3, 2020

⁹Available at https://www.scribd.com/document/374791128/Complaint-of-Arvind-Gupta-on-ICICI-Bank-Videocon-Loan-Frauds#download&from_embed visited on December 4, 2020

Addition to this loan amount, ICICI bank aided the Videocon group by extending its arms to overseas destinations too. As ICICI bank even approved offshore loan amount of Rs 660 crore to a foreign company owned by the Videocon groups.

A Videocon group company have its branch in the Cayman Island named Tuskar Overseas Inc. ICICI bank through its branches in UK and Canada also financed this branch with a huge sum of Rs 660 crores. This offshore loan approved on the basis of guarantees given by six Indian Videocon groups firms, they were Tek Care India Pvt Ltd, Shree Dhoot Trading and Agencies Ltd, Value Industries Ltd and Trend Electronics Ltd.

The above mentioned banking arrangements reflect a well established conspiracy on the part of ICICI Bank's loaning arrangement with the Videocon Group which is already in debt. Such arrangements or transactions constitute the Indian private sector banking scam.

Furthermore, the important point of consideration here is that NuPower Renewables (fully owned by Kochhar's husband after the transfer of 50% of shares of Videocon group to Deepak Kochhar as stated above) starting from the period of December 2010 till March 2012, also received large overseas funding amounting to Rs. 325 crore in the form of compulsorily convertible preference shares (CCPS) from a suspicious Mauritius based entity named Firstland Holdings Limited. Later in 2014, the above mentioned amount was transferred to another Mauritius based entity named DH Renewables Holding Limited.

Arvind Gupta the whistleblower filed an eight-page complaint against the Ms Chanda Kochhar exposes the ways where she misused her position as CEO of ICICI Bank by giving helping hand to highly indebted Videocon Group and in that same compliant he pointed out that Deepak Kochhar's company, husband of Ms Chanda Kochhar received funds around Rs.325 crore from Videocon companies.

“The greed of making private gains or benefits, Mrs Chanda Kochhar approved these loan amount in India and also supported the offshore funding which leads to wrongful losses to ICICI Bank as there was a serious risk of these loan amount to become nonperforming assets (NPA)”¹⁰.

2.2 CHRONOLOGY OF ICICI BANK-VIDEOCON LOAN CASE:

The year 2016 marked as a downfall for this strong lady as a probe of granting unauthorized loans to Videocon groups.

“The list of dates how the whole case came into existence”¹¹:

October 2016: The informant Arvind Gupta, a financial specialist in ICICI Bank and Videocon Group, raised this matter of supposed inconsistencies through his blog. He asserts that Ms Chanda Kochhar affected a Rs 3,250-crore advance to the Venugopal Dhoot-drove Videocon group in 2012 as a trade-off for an arrangement in NuPower Renewables and Supreme Energy, a energy firm own by her significant other Deepak Kochhar. He also writes to Prime Minister, the RBI Governor and a few different specialists or agencies to look into this scam and requesting a probe. His protest, in any case, accumulates no consideration.

March 2018: The case attracts the attention when another anonymous informant gripes against the bank and its top administration, including Ms Kochhar, when they were intentional delaying in charging or recognizing concussion in 31 credit accounts somewhere in the range of 2008 and 2016 to save money on furnishing costs. These charges lead to the probe by different organizations, such as CBI, ED and SFIO, and due to this Kochhar relatives also came into spotlight.

October 28, 2018: The bank expresses that it has surveyed internal process for credit approval and 'discovered them to be robust'. The assertion brings up that the approved loan to Videocon Group was taken at the consortium level. Although Ms Kochhar was part of the lending

¹⁰ “A nonperforming asset (NPA) refers to a classification for [loans](#) or [advances](#) that are [in default](#) for a period of 90 days or more”. [Alicia Tuovila](#), *Non-Performing Asset (NPA) available at <https://www.investopedia.com/terms/n/non-performing-assets.asp>*, visited on December 11, 2020

¹¹ Available at <https://www.moneycontrol.com/news/business/heres-a-timeline-of-icici-bank-videocon-loan-case3460141.html> visited on December 2, 2020

committee which approved the loan but she didn't have any personal stake in it as the decision made by the whole committee members. The bank's board additionally mentioned the full confidence in Kochhar, denying any irregularities on her part and precluding any 'conflict of interest'.

March 31, 2018: The CBI (Central Bureau of Investigation) initiated inquiry. Later the investigation agencies question Deepak Kochhar and his sibling Rajiv Kochhar.

April 3, 2018: Around this duration of investigation, ICICI Bank Chairman M K Sharma defending its CEO Chanda Kochhar publishes the statement that the board has full trust in her and precludes any quid pro quo as alleged concerning the advance given to Videocon group. "The board has resolved that there is no doubt of any quid pro quo/nepotism/conflict of interest as is being alleged.

April 4, 2018: The Serious Fraud Investigation Office (SFIO) looks for the Ministry of Corporate Affairs' approval to probe ICICI Bank's Rs 3,250 crore loans to the Videocon group in 2012.

May 23, 2018: The Securities and Exchange Board of India (SEBI) serves notice to ICICI Bank's CEO and MD Chanda Kochhar on dealings of the loan approval with Videocon Group and NuPower Renewables, promoted by her companion Deepak Kochhar. The market controller asks Kochhar and the bank to present their reactions till June 7 corresponding to a 12-page show-cause notice it served to ICICI Bank and Kochhar on May 23.

May 30, 2018: The ICICI Bank board begins an independent probe.

June 2018: The bank appoints retired Supreme Court judge Justice BN Srikrishna to head the independent panel started by ICICI Bank's board.

June 8, 2018: ICICI Bank and Chanda Kochhar ask more time to respond to the showcause notice served by market regulator SEBI.

July 5, 2018: SEBI asks Kochhar to answer to the show cause notice over alleged infringement of listing disclosure norms by July 10. Kochhar and the bank had missed the June 7 deadline and

looked for more time to respond to the show cause because of an absence of documentary evidence that helps the claims.

October 4, 2018: The ICICI Bank board acknowledges Chanda Kochhar's request to seek early resignation. The bank says that the enquiry initiated by the board will stay unaffected and certain advantages will be dependent upon the result of the enquiry.

January 24, 2019: The CBI registers a FIR against Chanda Kochhar, her better half Deepak Kochhar and Videocon group MD Venugopal Dhoot over alleged inconsistencies in loans approved by the bank to the group in 2012.

January 30, 2019: The board headed by Justice BN Srikrishna finds that Kochhar abused the bank's code of conduct in the Videocon loan case. Following the report, the bank's board says it will treat her separation as 'termination for cause'¹² under their internal policies.

III. INVESTIGATION AGENCIES WORKING ON THIS ICICI SCAM:

3.1. CBI¹³ -the Government of India (GOI) set up the Central Bureau of Investigation (CBI) in the year 1st April 1963. Under this agency, different wings¹⁴ were established include specific areas. One of the wings named as Economic Offences Wing which was established in 1994

¹² Termination for cause does not include non-performance – it includes only behaviour which qualifies as misconduct. [Debjani Aich](#) and [Stephen Mathias](#), *Employment & labour law in India* available at <https://www.lexology.com/library/detail.aspx?g=fa2fb547-5828-419a-bd3b-4ef01b612643> visited on December 2, 2020

¹³ Available at <http://www.cbi.gov.in/aboutus/aboutus.php> visited on December 3, 2020

¹⁴ CBI has the following Divisions:

1. Anti Corruption Division
2. Administration Division
3. Central Forensic Science Laboratory
4. Directorate of Prosecution
5. Economic Offences Division
6. Policy & Coordination Division
7. Special Crimes Division

consequent to the approval of reorganization plan of the CBI¹⁵. Accordingly, three investigation divisions were created under CBI:

(a) Anti Corruption Division which deals with cases of corruption and fraud committed by public servants of all Central Government Departments, Central Public Sector Undertakings and Central Financial Institutions.

(b) Economic Crimes Division - They deal with bank frauds, financial frauds, Import-Export & Foreign Exchange Violations, large-scale smuggling of narcotics, antiques, cultural property and smuggling of other contraband items etc.

(c) Special Crimes Division

3.2. Directorate of Enforcement¹⁶ also called Enforcement Directorate (ED) is a specialized financial investigation agency under the Department of Revenue, Ministry of Finance, and Government of India, which enforces the following laws:

- i. Foreign Exchange Management Act, 1999 (FEMA) - A Civil Law, which empowered officers to conduct investigations into suspected contraventions of the Foreign Exchange Laws and its Regulations. It also adjudicates these matters and imposes penalties on those adjudged to have contravened the law.
- ii. Prevention of Money Laundering Act, 2002 (PMLA) - A Criminal Law, under this act, officers are empowered to conduct investigations to trace assets derived out of the proceeds of crime, also provisionally attach/ confiscate those unlawful assets, and to arrest and prosecute the offenders found to be involved in Money Laundering.

3.3 Serious Fraud Investigation Office (SFIO)¹⁷ has been established through the Government of India¹⁸. It is a multi-disciplinary organisation under the Ministry of Corporate Affairs, consisting of experts in the field of accountancy, banking, capital

¹⁵ Hon'ble Supreme Court in the case of *Vineet Narian and others vs. Union of India*, discuss the existing Legal Division which was reconstituted as the Directorate of Prosecution in July 2001.

¹⁶ Available at https://enforcementdirectorate.gov.in/about_ed.html?p1=1201131607013755449 visited on December 4, 2020

¹⁷ Available at https://sfio.nic.in/about_history_sfio visited on December 4, 2020

¹⁸ The Minister of Corporate Affairs, *INVESTIGATION OF CORPORATE FRAUDS BY SFIO* (Government Of India, 2015)

market, company law, forensic auditing, information technology, investigation, law and taxation etc. for detecting and prosecuting white-collar crimes/frauds.

3.4 Securities Exchange Board of India (SEBI)¹⁹ The Preamble of the Securities and Exchange Board of India describes the basic functions of the Securities and Exchange Board of India as

"To protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto"²⁰

IV. INVESTIGATION AND CHARGES FRAMED BY DIFFERENT AGENCIES

4.1. CBI framed the following charges

A case registered by the CBI against Ms Chanda Kochhar former ICICI CEO and MD, her husband Deepak Kochhar and Videocon MD V.N. Dhoot²¹ under the charges of **cheating**²² **and criminal conspiracy**²³ and possesses liability under **section 120B**²⁴ **and section 420**²⁵ **of**

¹⁹Available at <https://www.sebi.gov.in/about-sebi.html> visited December 11, 2020

²⁰ Supra note 13

²¹ [Remya Nair](https://theprint.in/india/governance/cbi-is-building-its-case-against-chanda-kochhar-on-these-2-transactions-from-2009/182847/), *CBI is building its case against Chanda Kochhar on these 2 transactions from 2009*, available at <https://theprint.in/india/governance/cbi-is-building-its-case-against-chanda-kochhar-on-these-2-transactions-from-2009/182847/> visited on December 11, 2020

²² "Section 415 of IPC states about Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". Explanation.—A dishonest concealment of facts is a deception within the meaning of this section". THE INDIAN PENAL CODE 1860 (Act No. 45 of 1860)

²³ "120A. Definition of criminal conspiracy.—When two or more persons agree to do or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object". THE INDIAN PENAL CODE 1860 (Act No. 45 of 1860)

²⁴ "120B. Punishment of criminal conspiracy.—

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both". THE INDIAN PENAL CODE 1860 (Act No. 45 of 1860)

IPC which states the punishment for criminal conspiracy and cheating. CBI also make charges of **Section 7 (taking gratification) and section 13(2) (criminal misconduct) read with section 13(1) (d) (pecuniary advantage)** which made liable under **the Prevention of Corruption Act (PCA) 1988**

As per the report of CBI, she conspired with her husband and Videocon group MD for approval of loan using his position as CEO of ICICI bank. The FIR alleges that the Rs 300 crore rupee term loan to Videocon International Electronics Ltd was approved by a sanctioning committee of which Chanda Kochhar was a part. “As a result, Chanda Kochhar misused her position and received “illegal gratification/undue benefit” through her husband”²⁶.

1.2 ED(Enforcement Directorate) framed charges after going through CBI FIR:

ED frame charges of money laundering against the Kochhar’s and their business entities for "illegal sanctioning of loans amounting to Rs 1,875 crore to the Videocon Group of companies"²⁷"

As per chapter II of Prevention of Money-laundering Act 2002²⁸ which discuss the offence of money laundering. This chapter includes:

Section 3. Offence of money-laundering.—“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 and projecting it as untainted property shall be guilty of the offence of money-laundering”²⁹.

²⁵ “420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”. THE INDIAN PENAL CODE 1860 (Act No. 45 of 1860)

²⁶ Supra note 16

²⁷ Available at <https://www.bloomberquint.com/business/ed-files-first-chargesheet-against-kochhars-dhoot-in-icici-bank-videocon-group-pmla-case-visited-on-December-11, 2020>

²⁸ THE PREVENTION OF MONEY LAUNDERING ACT 2002 (Act No. 15 of 2002)

²⁹ Id

Section 4. Punishment for money-laundering.—“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 which may extend to five lakh rupees: Provided that where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall affect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted”³⁰.

“There was a recent amendment made to section 3 of the said Act through finance act 2019”³¹. 2019 amendment made more clarification by adding an explanation to section 3 of the above-mentioned act. The explanation of section 3:

In section 3 of the PMLA, the following explanation has been inserted³², namely:--

"Explanation.-- For the removal of doubts, it is hereby clarified that--

i. a person shall be guilty of the offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:--

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; **or**

³⁰ Supra note 28

³¹ [Faraz Alam Sagar & Pragati Sharma, PMLA Amendment 2019 – Plugging the Loopholes](https://corporate.cyrilamarchandblogs.com/2019/09/finance-act-2019-prevention-money-laundering-act-amendment/), Available at <https://corporate.cyrilamarchandblogs.com/2019/09/finance-act-2019-prevention-money-laundering-act-amendment/> visited on December 11, 2020

³² Vijay Pal Dalmia and [Rajat Jain](#), *India: (Indian) Prevention Of Money Laundering Act 2002 (PMLA) – Latest Amendments & Impact*, available at <https://www.mondaq.com/india/money-laundering/841516/indian-prevention-of-money-laundering-act-2002-pmla-latest-amendments-impact> visited on December 11, 2020

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

- ii. the process or activity connected with proceeds of crime is a **continuing activity** and continues till such time a person is directly or indirectly **enjoying the proceeds of crime** by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever."

1.3 SFIO is at investigation stage:

The SFIO (Serious Fraud Investigation Office) "has initiated a probe in the deals between Deepak Kochhar's NuPower Renewables and Videocon Group in connection with the ICICI Bank Videocon loan default case"³³. Charges are yet to be framed by SFIO as they are in process of investigation.

1.4 SEBI initiated proceedings:

SEBI has also started proceedings against ICICI Bank Ltd for the "non-disclosure of information" as this matter raise the issue of conflict of interest while granting loans to the Videocon group. "SEBI has sent the bank and Chanda Kochhar, its MD and CEO, a notice alleging violation of Listing Obligation and Disclosure Requirements (LODR) and for not making adequate disclosures. SEBI was probing alleged corporate governance and disclosure lapses at the bank"³⁴.

³³ Divyesh Singh, *SFIO starts probe in deals between Videocon and Deepak Kochhar* available at <https://www.indiatoday.in/india/story/sfio-starts-probe-in-deals-between-videocon-and-deepak-kochhar-1612822-2019-10-25> visited on December 11, 2020

34

Jayshree P. Upadhyay, *Sebi serves notice to ICICI Bank's Chanda Kochhar in Videocon loan case* available at <https://www.livemint.com/Companies/TQvCn1FspZGwvirDQg826H/Sebi-notice-to-ICICI-Banks-Chanda-Kochhar-in-Videocon-loan.html> visited on December 11, 2020

V. ANALYSING THE WHOLE SCAM THROUGH DIFFERENT LEGAL PERSPECTIVE:

5.1 UNDER LENSE OF RELATED PARTY TRANSACTION

“A related party transaction as the term itself explaining the core idea that person who has a connection with the company, body corporate, or its directors in a way that is not connected to the company's transactions; i.e., someone who has a special relationship with the company before or before the concerned transaction taking place”³⁵.

As per Section 2(76)³⁶ of the Companies Act which defines” related party”. Who come under the term “related party”:

- Relatives of directors
- Relatives of key managerial personnel,
- Firms and companies, where the director or manager holds an interest and
- Any person upon whose instruction the manager or director is accustomed to act.

³⁵ *Gautami Govindrajan , Analysing the Chanda Kochhar Scam Through the Lens of Related Party Transactions available at <https://mnlucclrblog.home.blog/2019/05/02/analysing-the-chanda-kochhar-scam-through-the-lens-of-related-party-transactions/> visited on December 11, 2020*

³⁶ “(76) "related party", with reference to a company, means—

- (i) a director or his relative;
 - (ii) a key managerial personnel or his relative;
 - (iii) a firm, in which a director, manager or his relative is a partner;
 - (iv) a private company in which a director or manager 1[or his relative] is a member or director;
 - (v) a public company in which a director or manager is a director 2[and holds] along with his relatives, more than two per cent of its paid-up share capital;
 - (vi) any body-corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
 - (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:
- Provided** that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- viii) any body corporate which is—
 - (A) a holding, subsidiary or an associate company of such company;
 - (B) a subsidiary of a holding company to which it is also a subsidiary; or
 - (C) an investing company or the venturer of the company;”;

Explanation.—For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.]

(ix) such other person as may be prescribed”. THE COMPANIES ACT, 2013 (Act No. 18 of 2013)

Referring to Section 188³⁷ of the Companies Act 2013 which states the prohibition where the company does not suppose to enter into any contract or arrangement in respect of the list of transactions mentioned under the said above provision. However, the prohibition is not like an

³⁷ “**188. Related party transactions**

(1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—

- (a) sale, purchase or supply of any goods or materials;
- (b) selling or otherwise disposing of, or buying, property of any kind;
- (c) leasing of property of any kind;
- (d) availing or rendering of any services;
- (e) appointment of any agent for purchase or sale of goods, materials, services or property;
- (f) such related party's appointment to any office or place of profit in the company ,its subsidiary company or associate company; and
- (g) underwriting the subscription of any securities or derivatives thereof, of the company:

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution:

Provided further that no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

Explanation.— In this sub-section,—

(a) the expression “office or place of profit” means any office or place—

(i) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(ii) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(b) the expression “arm's length transaction” means a transaction between two related parties that is conducted as if they were unrelated so that there is no conflict of interest.

(2) Every contract or arrangement entered into under subsection (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.

(3) Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the Company against any loss incurred by it.

(4) Without prejudice to anything contained in sub-section (3), it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

(5) Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,—

(i) in case of a listed company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and

(ii) in case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees”. THE COMPANIES ACT, 2013 (Act No. 18 of 2013)
<http://ebook.mca.gov.in/default.aspx>

absolute ban. The section stipulates certain circumstances within which such transactions are regulated. No related party transaction can take place lawfully without the consent and previous approval of the company's Board of Directors. "Further, a resolution must be passed by the Board to accept such a transaction and the person who is related, not allowed to vote in a proceeding. Rule 15 of Companies (Meeting of Board and its Powers) Rules 2014 also mentioned about this requirement"³⁸.

Analysing the Chanda Kochhar matter and related party transaction there was no doubt and even strong shreds of evidence seen how that transaction is related. As per sec 2(76) clause 7 of Companies act, it is stated that "advice a director is accustomed to act". Here Ms Chanda Kochhar not related to videcon group by any relationship but since seeing the relationship of her spouse with the videcon group and the instances stated where how the loan amount approved to debt-ridden group shows the indirect relationship and interest of her approving such huge loan. As there was also an element of quid pro quo in approving the loan which at stretch make this whole transaction as "related party transaction" as per my understanding and pieces of evidences of the referred case.

5.2 UNDER THE LENSE OF CONFLICT OF INTEREST :

Conflict of interest creates circumstances where one is mangled between one's professional duties and one's personal interests, in making a business decision. To protect the interest of various stakeholders, law monitors the conduct of directors by imposing certain duties, which by and large reduces the chance of bargain the interest of the company. "There are multifold duties imposed on directors under this core principle that directors should always work with full of honesty and with reasonable care and caution considering the knowledge and experience that they have"³⁹.

Conflicts of interest are at the core of most corporate governance controversies, whether they are related to big-ticket acquisitions, unreasonable CEO pay, related party transactions or hiring and firing. Conflicts of interest are hardwired to widely held companies where the owners or

³⁸ *Gautami* Supra note 35.

³⁹ Aarati Krishnan, *All you wanted to know about conflict of interest*, The Hindu, (April 16, 2018) available at <https://www.thehindubusinessline.com/opinion/columns/slate/all-you-wanted-to-know-about-conflict-of-interest/article23563094.ece> visited on December 11,2020

shareholders entrust their decision-making powers over a company to a high-grade set of top managers who then make all the important or essential business decisions on their behalf. Governance mechanisms include independent directors on the Board, or a nomination and remuneration committee is put in a situation where they mainly check such conflicts of interest.

Conflicts of interest are quite extensive in the financial world, be it for distributors who draw substantial commissions from financial products they sell, or advisers who possess personal positions in the stocks they extensively recommend.

If one is an investor, then he should be aware of the conflicts of interest that advance large whenever one deals with a market player or intermediary. But then, conflict of interest situations arises almost in every dimension of our daily life, be it the doctor who receive expensive gifts from pharmaceutical companies, a police officer who accepts benefits from corrupt people or a school-teacher who runs costly tuitions. The only possible way to dealt such a situation is to insist on adequate disclosures.

We all face conflicts of interest at one time or another. If one face such a situation, it is recommended to disclose it as early as possible.

In this matter and referring to “facts of the case”⁴⁰ and the interest involved in the transaction what I concluded that:

- 1) As per the Reserve Bank of India (RBI) Master Circular- “Loans and Advances Statutory and Other Restrictions”⁴¹, it mentioned certain regulatory restrictions which stated that loans and advances should not be granted to relatives of a bank’s chairman/managing director or other directors, etc without the prior approval or permission of the board of directors of the bank.
- 2) Further referring to the Securities and Exchange Board of India (SEBI), all directors and key managerial personnel of listed companies should disclose or mention any "conflict of interest" in any transactions implemented by the company.

⁴⁰Harini Daliparthi & Suchit Patel, *Non-Disclosure of Conflict of Interest – Allegations In Ms. Chanda Kochhar’s Case* available at <http://www.theindianlawyer.in/blog/2018/10/06/non-disclosure-conflict-interest-allegations-ms-chanda-kochhars-case/> visited on December 11,2020

⁴¹ [Master Circular DBOD.No.Dir. BC.16/13.03.00/2014-15 dated July 1, 2014](#) ¶ 2.2.2

Here, in this case, Ms Chanda Kochhar failed to disclose or fail to mention the conflict of interest, if any, concerning transactions between Videocon Group and NuPower Renewables.

5.3 UNDER THE LENSE OF CRIMINAL OFFENCES⁴²:

As CBI lodge the case of criminal conspiracy and cheating against the Ms Chanda Kochhar. So, to review these provision and the acts involve raises the number of questions regarding the conspiracy between the Ms Chanda Kochhar and her spouse and videcon group. In this matter **as this still in process of an investigation** but the circumstances and evidence in the news prove the certain clear intention of the conspiracy between this group and lead to loss to the public.

As it is held in the case of “**Mohd Usman Mohd Hussain Maniyar v State of Maharashtra**”⁴³ that offence under section 120B IPC the prosecution need not prove that conspirators expressly agreed to do or cause to be done the illegal act the agreement may be proved by necessary implication, the surrounding circumstances and the acts of parties.

Further referring to the case of “**R K Dalmia v Delhi administration**”⁴⁴ held that it is not necessary that each member of a conspiracy must know all the details of the conspiracy.

Even honourable Supreme Court stated in the case of “**Shivanarayan Laxminaryan Joshi v State of Maharashtra**”⁴⁵ that conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can only be proved largely from the inferences drawn from acts of illegal omission committed by the conspirators in pursuance of a common design. Here in this case even if there are no direct evidence but the whole circle of approving the loan and in returns benefits shows the instances of conspiracy and cheating.

⁴² Cheating and Criminal Conspiracy charges framed by the CBI

⁴³ 1981 3 SCR 68

⁴⁴ 1963 1 SCR 253

⁴⁵ 1980 2 SCC 465

The observation made by the court in the case of “**State of Madhya Pradesh Vs. Sheetla Sahai and Others**”⁴⁶ regarding the decision taken collectively by various authorities which were ad idem in their view in the decision-making process, instances suggest that authorities abused their position or took the decision to cause any wrongful gain to themselves or a third party or for causing wrongful loss to State or to provide pecuniary advantage without any public interest.

Same circumstances arise in this situation as authorities used position to approve the loan and receive indirect benefits which not only provide a pecuniary advantage to Ms Chanda Kochhar but also a loss to the public at large.

VI. CONSEQUENCES :

Chanda Deepak Kochhar v. ICICI Bank Ltd⁴⁷

In this case following issues raised before Bombay High Court:

1. Whether ICICI is an authority under Article 12 of the Indian constitution?
2. Whether approval of RBI regarding termination is justiciable?
3. Implications of [Section 35B \(1\) \(b\)](#) of the Act also challenged.
4. Whether removal of Ms Chanda Kochhar from CEO of ICICI bank would be considered under the term termination for a cause?

As per the case, Bombay High court referred these issues and held that

ICICI is a private bank. It is regulated by its Board of Directors (BOD) and not established under any statutory instrument. Even bank is not receiving any funds from the Government. Honourable Bombay High Court referred the case **M/s. Ruchi Soya Industries Ltd. & Ors. V/s. IDFC Bank Ltd. & Ors**⁴⁸ and held that ICICI is not an Authority (other authorities) under [Article 12](#) of the Constitution of India.

⁴⁶(2009) 3 Supreme Court Cases (Cri) 901

⁴⁷Supra note 4

⁴⁸ (2017) SCC OnLine Bom. 4252

[The Banking Regulation Act](#) of 1949 is enacted to supervise and regulate commercial banking. [This Act](#) empowers the Reserve Bank⁴⁹ to issue directives to the banks, regulate the shareholding and the working of banks in the interest of banking policy. RBI issues directions or indications to the banks under the Act in furtherance of economic and banking policy. The core idea behind the conferment of power on the Reserve Bank is the interest of banking policy. Banking companies such as ICICI have the right to conduct their own affairs, here Reserve bank ensures that their activities will not affect the economy in general. The directives issued by the Reserve Bank are in the realm to achieve larger policy goals.

Referring to [Section 35B \(1\) \(b\)](#) which is also enacted with the same object or in the same line of thought, that is to ensure that the actions of a bank do not have any adverse impact on the banking.

Court referred the case “**Federal Bank Ltd. vs. Sagar Thomas and Others**”⁵⁰ where the question related to the proposal for termination of an employee is received from the employer bank and court held that the Reserve Bank looks at it from the perspective of its impact on general banking. Here also Proposal of referring that matter to RBI is not to scrutinized in the context of a service contract or it does not uphold or, adjudicate or decide the rights of the parties inter se, but only focuses on the consequences of the proposed action of the employer bank. ICICI has its own Code of Business Conduct and Ethics. This Code of ethics regulates its employees, officers and directors. This code deals with issues such as conflicts of interest, personal investments, workplace responsibilities, duties of directors, disciplinary procedures. “The appointment of the Petitioner from time to time is with the resolutions of the Board of ICICI and under the resolution, appointments have been made wherein salaries, per-requisites, a bonus has been fixed”⁵¹. Therefore the relationship between the Petitioner i.e. Ms Chanda Kochhar and the ICICI Bank is governed by the contract of terms of the resolution and orders passed by the ICICI. The services of the Petitioner are in terms of the matter of the contract of service with ICICI. Court dismisses the writ petition.

⁴⁹ The Reserve Bank, constituted under the [Reserve Bank of India Act](#), termed as Central Bank exercising supervisory and regulatory powers or act as banker’s bank.

⁵⁰ (2003)10 SCC 733

⁵¹ Supra note 43

This was appealed before honourable Supreme Court by the Ms Chanda Kochhar regarding the issue that termination of her from MD and CEO of ICICI bank was informed months after Bank approved her voluntary resignation in October 2018. She basically claimed her Termination from service, “illegal, untenable and unsustainable in law⁵²”.

Supreme Court refused to interfere in this matter of Bombay High court by stating that it comes under the realm of private banks and employee.

VII. CONCLUSION

India considered as one of the growing economy and the biggest market in the coming years. To accomplish this objective we need a strong economy at each level inclusive but not exhaustive of administrative framework, policy framework and legal framework. However the existing loopholes have paved way for widened spectrum of scams and frauds which in result has weakened this ultimate objective of economy growth.

Since 2010, the wave of 2G scam till present, we have witnessed the celebrated scams of business tycoons not limited to Nirav Modi, Vijay Malaya, Ms Chanda Kochhar. It has not only affected the banking structure but at present is also affecting the economy at large scale as it is reflecting bad reputation of our country at the global level and also affecting the general public as they lost faith in the government structure and even banking system. People start questioning their decisions of saving in banks, purchasing bonds, securities or any mode of banking due to the number of scams we all are facing. This arises the situation where our country people have no trust then how people across the globe will invest in our country. This era of globalization where boundaries are blurred but these frauds just built the "Great Wall of China" in our country in the field of investment or building a strong economy or fulfilling the objective of one of the biggest economic market.

Ms Chanda Kochhar matter which yet to decided, an eye-opening for our country. The women which shows the power of believing in oneself or who is women empowerment model in it shaken not only our own country but the whole world. This scam took place around 2008-2012, exposed in the year of 2016 but charges framed in the year of 2019 which not only raised trust

⁵² *Chanda Kochhar sacking: SC declines to interfere with Bombay HC order*, The Indian Express, December 2, 2020 available at <https://indianexpress.com/article/business/banking-and-finance/sc-rejects-chanda-kochhars-appeal-against-sacking-as-icici-bank-ceo-7075121/>

issues with the banking structure but also on our own government. Agencies such as CBI, SEBI, ED and SFIO all investigating the whole matter, framing charges, hoping the issues comes to rest and restore the trust in at least legal structure of our country. Glaring the economic legal framework which I believe is very strong as at each level checks and balances are seen as referring to SEBI disclosure guidelines where it is mentioned that interested parties have to or clearly state the disclosure statement. Comparing the consequences in this matter where Bank terminate the Ms Chanda Kochhar even after approving her resignation under the category of "termination for cause" shows the strict discipline policy and even Bombay high court and the honourable supreme court refused to interfere such matters as it is not affecting the one party, as the image of the whole country as at stake.

Here, I am not at a position to put forward the concluding views in this whole matter as this matter is yet to be decided and using my freedom under Article 19 based on media report would be wrong. I wish India to become economic world leader.