

## SYNOPSIS

The procedure for purchasing defence equipment is elaborately laid down in a Defence Procurement Procedure document which has been amended from time to time. However broadly from 2001 till date, the procedures in place provide the following:

1. The Services Head Quarters have to give their requirements for the quality and quantity of the equipment that they need. This is called the Services Qualitative Requirement (SQR)
2. Thereafter the matter goes to a larger body called the Categorisation Committee which then decides whether the equipment could purchased/ made domestically or would have to be purchased from abroad or a combination of the two.
3. Thereafter an even higher body called the Defence Acquisition Council (DAC) approves the quantity, quality and whether the equipment should be purchased/made domestically or purchased from abroad or a combination of the two. The DAC gives it's approval called the Acceptance of Necessity.

It is only then that tenders are issued.

In 2007 after going through the above procedure tenders were issued by the Ministry of Defence for the purchase of 126 fighter aircrafts and it was specified in the Request for Proposal that 18 of these aircrafts would be purchased from abroad in a 'fly-away' condition and the remaining 108 would be manufactured in India in the factory of Hindustan Aeronautics Limited (HAL) with transfer of technology from the foreign vendor. Six companies had applied and after extensive trials by the Air Force two were short listed. After that the financial bids were opened and Dassault Company manufacturing the Rafale aircraft was declared the lowest tenderer and thereafter price negotiations began. These negotiations were at a very advanced stage (95% complete) by 25<sup>th</sup> march 2015.

However within 15 days of this, the Prime Minister of India and the President of France announced a totally new deal jettisoning the virtually complete 126 aircraft deal and the Prime Minister on behalf of India agreed to purchase only 36 Rafale Aircrafts in a 'fly-away' condition without any transfer of technology and make in India. It later turned out that the new deal involved 50% of the value of the contract to be given as "offset contracts" to Indian companies and that the government informally told Dassault and the French government that the bulk of the offset contracts would have to be given to a company of Mr. Anil Ambani which had just been set up. When the final contract was signed after price negotiations, it

transpired that the price of the aircraft had been increased to more than double to what was under consideration in the old deal of 126 aircrafts.

It is clear therefore that the following acts were committed by various public servants which amount to offences under the Prevention of Corruption Act. The relevant facts which disclose these offences are summarised below:

- That the highest ranking public officials, unilaterally, in violation of all mandatory procedures, without obtaining any SQRs from the IAF, or any decision of the Categorisation Committee or any Acceptance of Necessity from the Defence Acquisition Council, entered into a Memorandum of Understanding with the French regarding purchase of *just* 36 Rafale aircrafts, all in a 'fly away' condition with no Transfer of Technology and no Make in India.
- That they did so after virtually scrapping the earlier procurement process for 126 aircrafts, which had followed all due procedures, and was in accordance with the specifications of the Indian Air Force. In the process, all important strategic objectives of the earlier procurement procedure that were on the basis of institutions authorised to do so, were eschewed. Consequently, *just* 36 aircrafts were arbitrarily purchased, with no make in India and no Transfer of Technology against the determination of IAF Services Head Quarters, the Categorisation Committee and the Defence Acquisition Council.
- That under the earlier deal, HAL was to be the production agent for Dassault in India and there was no scope for offsets.
- That this act of unilaterally changing the deal by bypassing all laid down procedures, was to ensure that Mr. Ambani could be brought in as an offset partner for the purpose of obtaining for him offsets worth thousands of crores.
- That the French government as well as the Dassault Aviation company were told that this contract of 36 'ready to fly' aircraft will be only given to Dassault Aviation, if they gave the major part of the offset contracts in this deal to Mr. Anil Ambani's company.
- That Mr. Anil Ambani's recently incorporated company had no credibility or even eligibility to be an offset partner for Dassault. That therefore, the thousands of crores to be received by RAL through the offset contract are substantially in the nature of commissions.
- That the price of the aircrafts in the new deal has been increased from approximately 700 crores per aircraft to over 1600 crores per aircraft without any legitimate public interest.

The petitioners on coming to know of all these facts and having collected some of the evidence thereafter filed a complaint with the CBI for registering an FIR and investigating this case of 'criminal misconduct' by high ranking public servants. However, it is clear that there is enormous pressure on the CBI because of the nature of the persons involved not to undertake this investigation. Till date not even an FIR has been registered in the matter and hence the petitioners are approaching the Hon'ble Court for getting specially designated officers in the CBI to investigate this case and for this Hon'ble Court to monitor the investigation.

Hence, the present petition.

## LIST OF DATES

Date	Particulars
30.12.2002	To streamline procurement procedures and create a system of checks & balances to prevent corruption, Defence Procurement Procedures (DPP) were adopted.
28.08.2007	A Request for Proposal was issued by the Ministry of Defence for procurement of 126 MMRCA aircrafts of which 18 were to be procured in a 'fly-away' condition and 108 were to be manufactured in India by Hindustan Aeronautics Limited (HAL) under a Transfer of Technology agreement. RFP was issued as per requirements & specifications of IAF. Six vendors were in contention.
2008-2011	After extensive field trials by IAF, Dassault Aviation's Rafale & Eurofighter GmbH's Typhoon were declared as meeting the IAF's requirements in 2011.
30.01.2012	Dassault Aviation's Rafale aircraft was declared L1 on the basis of 'life cycle cost' metric i.e. the cost over the entire 'life cycle' of the aircraft of 30/40 years was considered as HAL was to be responsible for maintenance & support.
28.03.2012	Notwithstanding, the secrecy pact of 2008 between India & France, MoD disclosed cost of upgradation for Mirage aircrafts manufactured by Dassault Aviation. Cost of missiles to be procured from MBDA was also revealed.
03.03.2014	NDTV reported that A Work Share agreement had been signed between HAL & Dassault Aviation under which they were to be responsible for 70% & 30% of the work respectively for the 108 aircrafts to be made in India.
08.08.2014	The then Defence Minister told parliament that, <i>"The 18 direct fly away aircraft are expected to be delivered in three to four years from the signing of the contract. The remaining 108 license manufactured aircraft in India are expected to be delivered during the following seven years."</i>
04.03.2015	Mr. Anil Ambani entered the defence sector by acquiring 17.77% stake in Pipavav Defence & Engineering which was renamed Reliance Naval & Engineering. It has been unable to fulfil orders for Naval Offshore Patrol Vessels of the Navy on time, has a debt of Rs. 8000 Crores, and insolvency proceedings have been initiated against it within 3 years of Mr. Ambani's acquisition.

25.03.2015	<p>C.E.O. of Dassault, Mr. Eric Trappier stated in the presence of the IAF Chief &amp; H.A.L. Chairman, <i>"you can imagine my great satisfaction to hear...from HAL Chairman that we are in agreement for the responsibilities sharing... I strongly believe that contract finalisation and signature would come very soon."</i> Apparently, the C.E.O of Dassault, HAL Chairman, &amp; IAF Chief were not aware of any new deal and the earlier procurement for 126 aircraft was expected to be signed soon.</p>
28.03.2015	<p>Mr. Ambani's Reliance Defence Ltd. was incorporated</p>
08.04.2015	<p>On the eve of the Prime Minister's visit to France, the then Foreign Secretary, S. Jaishankar, told the press, <i>"In terms of Rafale, my understanding is that there are discussions under way between the French company, our Ministry of Defence, the HAL which is involved in this. These are ongoing discussions. These are very technical, detailed discussions. We do not mix up leadership level visits with deep details of ongoing defence contracts. That is on a different track. A leadership visit usually looks at big picture issues even in the security field."</i> Apparently, two days before a new deal was announced: (a) the procurement for 126 aircrafts was under negotiation; (b) HAL was a part of the negotiations and Make in India with Transfer of Technology was on the table; (c) Foreign Secretary had no knowledge of any new deal.</p>
10.04.2015	<p>A new deal was unilaterally announced for acquisition of <i>just</i> 36 aircrafts to be purchased in a 'fly-away' condition from France. The strategic objectives of acquiring self reliance in fighter aircraft manufacturing by HAL under a Transfer of Technology agreement and IAF's need for 126 aircrafts to arrest it's declining squadron strength were disregarded. The deal was announced in violation of Defence Procurement Procedures (DPP). Services Qualitative Requirements (SQRs) were not sought from the Indian Air Force Services Head Quarters (IAF SHQ) on the quantities to be procured. Recommendation was not sought from the Categorisation Committee on the 'mode of procurement', i.e. whether the aircrafts should be purchased from abroad or manufactured in India or a combination of both. Acceptance of Necessity (AON) was not sought from the Defence Acquisition Council (DAC) prior to the announcement.</p>

13.04.2015	In an interview to <i>Doordarshan</i> , the then Defence Minister, Mr. Manohar Parrikar, disclosed the total cost for acquisition of 126 aircrafts. He stated, " <i>We must remember that Rafale is a top-end multi-role fighter...but it is quit expensive. When you talk of 126 aircrafts, it becomes a purchase of about 90,000 crores</i> ". That would have put the price per aircraft at around Rs. 715 crores (90,000/126). He added, " <i>Modi-ji took the decision. I back it up</i> ".
17.04.2015	A report in the French <i>TTU Online: Strategic &amp; Defence Newsletter</i> stated, ( <i>The new deal</i> ), " <i>At the political level, is for Narendra Modi, to demonstrate that India is a reliable partner and reaffirm his authority ...and at the same time, he (is) devoted to the rise to power of the private consortium Reliance Ambani family, one of his main financial support(ers), (whom) he would like to see play a greater role in the defence industry.</i> "
24.04.2015	Mr. Ambani incorporated Reliance Aerostructure Limited (RAL) which was eventually approved by Raksha Mantri as Dassault's Indian Offset Partner
April, 2015	As per Dassault's official press release, DRAL joint venture was created in April of 2015. At the time the main procurement contract had not been signed.
13.05.2015	Presenting a <i>fait accompli</i> to Defence Acquisition Council an <i>ex post facto</i> Acceptance of Necessity (AON) was obtained.
16.06.2015	RAL applied for 289 acres of land in Mihan which was granted in " <i>record time</i> " of 10 weeks for a cost of Rs. 63 crores in exchange for a promised investment of Rs. 6500 crores.104 acres was taken over by RAL for Rs. 25 crores.
22.06.2015	Industrial licenses were granted <i>en masse</i> to various recently incorporated companies of Mr. Ambani's Reliance for manufacturing of various Defence equipments. RAL's license was for " <i>Manufacturing of Helicopters &amp; aircrafts Specially designed for Military Application</i> "
Late 2015	As reported in <i>Economic Times</i> , the French were uncomfortable about the increase in Offset Obligations from 30% to 50%. It was reported, " <i>The French side finally agreed to invest 50 per cent of the value following a phone conversation between Modi and French President Francois Hollande late last year.</i> "
24.01.2016	As reported in the <i>Indian Express</i> , on the eve of President Hollande's visit to India, Reliance Entertainment agreed to co-produce a movie of Ms. Julie Gayet, President Hollande's partner. Payments of \$ 1.42 million were eventually made.

26.01.2016	M.O.U was signed between India & France for 36 Rafale aircrafts.
23.09.2016	Main procurement contract signed along with the offset contract. In terms of the requirements of Offset Guidelines, RAL was approved as offset partner by Raksha Mantri.
03.10.2016	Within two weeks of the signing of the main procurement contract Dassault & Reliance announce their Joint Venture for discharge of offset obligations.
18.11.2016	Government stated in Parliament that, <i>“Inter-Governmental Agreement with the Government of French Republic has been signed on 23.09.2016 for purchase of 36 Rafale aircraft <b>along with requisite equipments, services and weapons</b>. Cost of each Rafale aircraft is approximately Rs. <b>670</b> crores and all the aircraft will be delivered by April 2022.”</i>
31.12.2016	Dassault Aviation's Annual Report revealed the actual price paid for the 36 aircrafts at about Rs. 60,000 crores i.e. more than double the Government's stated price in parliament.
16.02.2017	Joint Venture between Dassault & RAL i.e. DRAL incorporated. The price of 36 aircrafts was also revealed in the press release as Rs. 60,000 crores.
31.03.2017	Reliance Infrastructure Ltd 's annual report stated, <i>"our subsidiary Reliance Aerostructures has formed a Joint Venture Company with Dassault Aviation. <b>The Joint Venture shall facilitate the transfer of high end technology, while discharging offset obligations of INR 30,000 crore.</b>"</i>
31.03.2017	RAL's total asset remained Rs 25.49 crores i.e. other than the cost of 108 acres of land, RAL made no part of the promised investment of Rs. 6500 crores towards manufacturing. When RAL was approved by Raksha Mantri it was not 'engaged in the manufacture' of eligible defence equipments or services under Offset Guidelines.
21.09.2018	In an interview to <i>MediaPart</i> , regarding the selection of offset partner, Former President Hollande, stated that, <i>“We didn't have any say in this matter...It is the Indian government which had proposed this service group, and Dassault who negotiated with Ambani. We didn't have the choice, we took the interlocutor who was given to us.”</i>
23.09.2018	As reported in <i>Scroll</i> , former President Hollande further adds in a interaction with the press that Mr. Anil Ambani was suggested to the French as, <i>"part of the new formula of the Indian Government."</i>

27.09.2018	<i>The Wire</i> reports that Joint Secretary and Acquisition Manager (Air) who had been a part of the Contract Negotiation Committee raised objections over the increase on the manipulation of expert determined Benchmark Price. He was overruled and sent on leave.
29.09.2018	<i>The Economic Times</i> reports that the benchmark price determined by the Expert Committee was disregarded. Two officers, Rajeev Verma, Joint Secretary (Air) and AR Sule, Finance Manager (Air) also raised objections on the change in methodology to determine the new benchmark price.
04.10.2018	Petitioners' herein filed complaint to CBI against the Criminal Misconduct by public servants in Rafale deal.
10.10.2018	<i>MediaPart</i> reports that internal papers of Dassault's trade unions show that agreeing to set up a Joint Venture with Mr. Ambani's company was "imperative and mandatory" for Dassault and a "trade off" to secure the contract for 36 fighter aircrafts.

**IN THE SUPREME COURT OF INDIA [EXTRAORDINARY  
ORIGINAL JURISDICTION] WRIT PETITION (CRIMINAL)**

**No.**

**OF 2018**

**IN THE MATTER OF:-**

**1. Yashwant Sinha**

S/o Bipin Bihari Saran  
[REDACTED]  
[REDACTED]

...Petitioner No. 1

**2. Arun Shourie**

S/o Hari Dev Shourie  
[REDACTED]  
[REDACTED]

...Petitioner No. 2

**3. Prashant Bhushan**

S/o Shanti Bhushan  
[REDACTED]  
[REDACTED]

...Petitioner No. 3

**Versus**

**1. Central Bureau of Investigation**

Through its Director,  
Plot No. 5-B, 6th Floor, CGO Complex  
Lodhi Road, New Delhi -110003

...Respondent No. 1

**2. Union of India**

Through its Cabinet Secretary Cabinet  
Secretariat  
New Delhi -110001

...Respondent No. 2

A WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION SEEKING WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT FOR REGISTRATION OF FIR AND COURT MONITORED INVESTIGATION OF CORRUPTION BY PUBLIC SERVANTS IN HIGH PUBLIC OFFICES THAT IS VIOLATIVE OF THE RIGHTS GUARANTEED UNDER ARTICLE 14 AND ARTICLE 21 OF THE CONSTITUTION OF INDIA OF THE PETITIONERS HEREIN

To,

**THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES OF THE  
HON'BLE SUPREME COURT OF INDIA**

The Humble Petition of the  
Petitioners above-named

MOST RESPECTFULLY SHEWETH:-

1. That the Petitioners herein are aggrieved by the non-registration of FIR by the Central Bureau of Investigation (CBI) on a written complaint that was made to the CBI on the 4th of October, 2018. The 32 page complaint with 46 Annexes detailed *prima facie* evidence of commission of cognizable offences under the Prevention of Corruption Act by public servants occupying the highest of public offices in the country. The complete inaction of the CBI on the complaint made is a gross dereliction of its statutory duty to register an FIR on receiving information that discloses the commission of a cognizable offence. In a five-judge Constitutional Bench judgment in Lalitha Kumari v. Government of Uttar Pradesh & Ors (2014) 2 SCC 1, this Hon'ble Court held that U/s 154 of CrPC it is mandatory for the police to register an FIR, if information given *prima facie* pertains to the commission of a cognizable offence and no preliminary inquiry is permissible. The court held that where a statute specifically permits a preliminary inquiry, it is to be restricted to ascertaining whether the information provided *prima facie* pertains to a cognizable offence, and if it does, then FIR is to be mandatorily registered and thereafter investigated. The court directed that in any case, any preliminary inquiry must be completed within 7 days and no more. The Petitioners' complaint was made on the 4th of October, 2018. Any preliminary inquiry, even if permissible, should have been completed by the 11th of October, 2018. However, till date, no FIR has been registered on the Petitioners' complaint that in detail discloses *prima facie* evidence of commission of cognizable offences. Consequently, there has been no investigation whatsoever into the extremely serious corruption that has occurred and is ongoing and that has compromised India's national security.

A copy of the complaint is annexed as **ANNEXURE P1** at (Pages \_\_\_\_\_  
to \_\_\_\_\_)

- 1A. That petitioner No. 1, Mr. Yashwant Sinha, is a former Minister of Finance and former Minister of External Affairs. He has earlier served Hazaribagh

Lok Sabha constituency as its elected representative in Lok Sabha. He also served in the Indian Administration Service for a period of 24 years.

Petitioner No. 2, Mr. Arun Shourie, is a former Union Minister of Communication and Information Technology. He has worked with the World Bank and the Planning Commission of India. He is a former editor of Indian Express. He was awarded the Padma Bhushan in 1990 and the Ramon Magsaysay Award in the category of Journalism, Literature, and the Creative Communication Arts.

Petitioner No. 3, Mr. Prashant Bhushan, is an advocate working on issues of Transparency, Accountability, Institutional Integrity, & Human Rights.

2. That the non-registration of FIR is apparently on account of the fact that the complaint pertains to corruption in the procurement for 36 Rafale aircrafts by the highest public servants in the country and there is extreme pressure on the CBI due to which it is unable to discharge the duties cast on it in a fair and impartial manner.
3. That post the Kargil War of 1999, as part of the implementation of the report of the Group of Ministers on reforming the National Security System, new Defence Procurement Management Structures and Systems were set up in the Ministry of Defence (MoD). In order to implement the provisions laid out in the new Defence Procurement Management Structures and Systems, the procedure for Defence Procurement laid down vide MoD ID No 1(1)/91/PO (Def) dated 28 February 1992 was revised. The Defence Procurement Procedure - 2002 (DPP hereinafter) came into effect from 30 December 2002. The DPP has since been revised in 2005, 2006, 2008, 2009, 2011, 2013, and 2016. Post 2002, all defence procurements are subject to the DPP applicable. The twin objects of the DPPs have been to progressively increase the efficiency of the procurement process and to create the necessary system of checks and balances that eliminates the kind of corruption scandals that have engulfed procurements in the past. Towards the second end, increasingly strict conditions in the form of pre-contract 'integrity pacts' have been incorporated in the DPPs, violation of which opens the vendor to being barred from future procurements and the cancellation of the procurement itself. To illustrate just one such instance, in January of 2014, the government cancelled the Rs. 3600 crore contract with Augusta-Westland for helicopters on the ground of violation of the pre-contract 'integrity pact'. The DPP strictly governs all procurements.

A copy of MoD press release on cancellation of Augusta-Westland contract, dated 01.01.2014, is annexed as **ANNEXURE P2 at Pages (\_\_\_to )**

4. That to be able to face a 'two front' war, the sanctioned strength of the Indian Air Force (IAF hereinafter) is 42 squadrons with each squadron comprising between 18 to 21 aircrafts. The peak strength of the IAF was estimated to be about 39.5 in the 1990's. It has been progressively falling. At the end of the U.P.A term in 2014 it was 33. Today it is estimated to be effectively 31. 10 more squadrons of MIG 21s and MIG 27s are to be retired by 2024 as informed by Defence Minister Nirmala Sitharaman to parliament in December of 2017.

A copy of a report in *The Print*, on IAF's squadron strength, dated 20.09.2018, is annexed as **ANNEXURE P3 at (Pages to )**

5. The DPP broadly prescribes that first the Services Head Quarters have to give their requirement of what they need, quantity as well as quality, which is called Services Qualitative Requirement (SQR). That thereafter, the matter goes to the Categorisation Committee which then decides as to whether the equipment required by the services could be procured from India or from abroad or a combination of the two. Thereafter the matter goes to the Defence Acquisition Council comprising of Defence Minister, MoS (Defence), Chief's of Army, Navy, & Air Force, Defence Secretary, Secretary (Defence Research & Development), Secretary (Defence Production), Chief of Integrated Staff Committee Head Quarters, Director General (Acquisition), Dy Chief of Integrated Defence Staff, who then finally approves what is to be purchased and from where. It is thereafter that tenders are issued for procurement. Sometime prior to 2007, the Indian Airforce, gave its requirement for purchasing 126 combat aircrafts. Thereafter the Categorisation Committee keeping in view the need for India to become self sufficient in the long run in the manufacture of these aircrafts and not be dependent on foreign vendors, decided that of these 126 aircraft, 18 (1 squadron) would be purchased in 'fly-away' condition and the remaining should be manufactured locally in the factory of HAL under transfer of technology.
6. That to obviate structural issues affecting IAF, due process mandated by DPP was followed to procure advanced fighter aircrafts under the 2007 RFP. As per it's authority under the DPP, the IAF Services Head Quarters after a widely consultative process with multiple institutions prepared detailed Services Qualitative Requirements (SQRs) that specified;

- The number of aircrafts required as 126,

- The necessary 'India Specific Enhancements'
- The desirable weaponry and equipment

Pursuant to IAF's requirements & specifications in the SQRs and the Categorization Committee's recommendation that Make in India by HAL under a Transfer of Technology agreement should be the mode of procurement, the Defence Acquisition Council granted the mandatory Acceptance of Necessity (AON).

7. That on the basis of the AON, in accordance with requirements specified by the Indian Air Force, the government of the day issued a Request for Proposal (RFP) in 2007 for 126 Medium Multi-Role Combat Aircrafts (MMRCA). The RFP made clear that the bids were to be inclusive of cost of initial purchase, transfer of technology, licensed production, etc. Six vendors, i.e. Dassault Aviation, Lockheed Martin, Boeing, Saab, Eurofighter GmbH, and Russian Aircraft Corporation submitted bids. After extensive flight trials and technical assessment that extended from 2008 to 2011, the Indian Air Force announced in 2011 that Dassault's Rafale and Eurofighter GmbH's Typhoon fighters met the IAF's requirements.

A copy of MoD press release on 2007 RFP, dated 28.08.2007, is annexed to **ANNEXURE P1 at Pages (\_\_\_\_\_ to\_\_\_\_\_)**

8. That the average life of an aircraft is between 30 to 40 years, and as HAL was to be responsible for logistical & maintenance support over the entire life cycle, it was decided to determine the L1 by taking into account the entire 'life cycle costs' as opposed to just the cost of the initial purchase. On that metric, in 2012, it was found that Dassault's bid was the lowest and therefore negotiations began between Dassault and the Indian Government.
9. That the then government steered the negotiations to fulfill three inter-related objectives. First, the Air Force should get some aircraft at the earliest possible, since the MiG-21 and MiG-27 fleets were being retired from service. Second, the country must acquire access to advanced technologies; an order of such a large magnitude—buying 126 fighters—ought to be leveraged to obtain advanced technologies from the foreign vendor. Third, the one Indian company that had decades of experience in building aircraft—HAL—should build the fighter in India so that it would be in a position to maintain, service and overhaul the Rafale through its service life of 30-40 years.
10. That in March of 2014, a Work Share Agreement was entered into between Dassault Aviation and HAL according to which HAL would do 70

percent of the work on 108 planes that were to be manufactured in India while Dassault would undertake the rest of the work.

A copy of a report in *NDTV* on Work Share Agreement dated 03.03.2014 is annexed to **ANNEXURE P1 at Pages (\_\_\_\_\_to\_\_\_\_\_)**

11. That in May of 2014, the present incumbent took the office of the Prime Minister of India. Negotiations under the RFP issued in 2007 continued. In a press conference on 25th of March, 2015, Mr. Eric Trappier, the C.E.O, of Dassault, in the presence of the Chief of Indian Air Force and Chairman of H.A.L stated,

*“After an outstanding amount of work and some discussion, you can imagine my great satisfaction to hear, on one hand from the Indian Air Force chief of staff that he wants a combat proven aircraft which could be the Rafale...and on the other hand from HAL chairman that we are in agreement for the responsibilities sharing, considering as well our conformity with the RFP (Request for Proposal) in order to be in line with the rules of this competition. I strongly believe that contract finalisation and signature would come very soon.”*

Apparently, on 25.03.2015, Dassault was in final stages of negotiations with India for 126 aircrafts and HAL was to be Dassault’s partner in India. The Indian Air Force Chief, Dassault’s C.E.O, and the H.A.L. chairman were unaware of any new deal. Moreover, the statement of the CEO of Dassault shows that they were completely satisfied with having HAL as their partner. A copy of report in *The Week* on Dassault C.E.O’s statement, dated 24.09.2018, is annexed to **ANNEXURE P1 at Pages (\_to\_\_\_\_\_)**

12. That on 8th of April, 2015, on the eve of the Prime Minister of India’s visit to France, the then Foreign Secretary, S. Jaishankar stated,

*“In terms of Rafale, my understanding is that there are discussions under way between the French company, our Ministry of Defence, the HAL which is involved in this. These are ongoing discussions. These are very technical, detailed discussions. We do not mix up leadership level visits with deep details of ongoing defence contracts. That is on a different track. A leadership visit usually looks at big picture issues even in the security field.”*

Six facts are evident from what the Foreign Secretary said *just two days* before the Prime Minister’s announcement: [i] Negotiations were still going on regarding the Rafale aircraft; [ii] Manifestly these were going on under the original RFP for 126 aircrafts; [iii] HAL was very much to be a part of

the project as it was of the negotiations; [iv] The Prime Minister of India and the President of France were to focus on the “big picture issues even in the security field”; [v] No new deal for Rafale aircrafts was on the agenda for the talks in Paris; [vi] Consequently, no preliminary ground work was done as regards any new deal.

A copy of relevant pages from the transcript of Foreign Secretary’s press interaction, dated 08.04.2015, is annexed to **ANNEXURE P1 at Pages (\_\_\_\_to\_\_\_\_)**

13. That within two days of the Foreign Secretary stating that the old deal was still being negotiated, on the 10th of April, 2015, a new deal was inexplicably initiated and announced by the Prime Minister without following due procedure. The new deal summarily jettisoned all the important strategic objectives of the earlier procurement process. The number of aircrafts were arbitrarily reduced to *just* 36 that has severe consequences for IAF’s squadron strength and its ability to fight a ‘two front’ war. The vital objective of securing Transfer of Technology to ensure that HAL could manufacture advanced fighter aircrafts and be in a position to provide logistical support, maintenance, support, & spares throughout the life cycle of 30-40 years for these aircrafts was inexplicably jettisoned severely compromising national security.
14. The Prime Minister of India and the President of France signed a Joint Statement on 10<sup>th</sup> April 2015, saying:
  - a. That under a new deal, only 36 aircrafts would be purchased in a ready to fly condition
  - b. That the aircraft and associated systems and weapons would be delivered on the same configuration as had been tested and approved by Indian Air Force
  - c. That they would be purchased on terms that would be better than conveyed by Dassault Aviation as part of a separate process underway
15. That this sudden change of the deal and the announcement of this new deal for just 36 aircrafts in a ‘fly-away’ condition from France with no Transfer of Technology and no Make in India, was in complete violation of all laid down Defence Procurement Procedures:
  - a. It violated the requirement of there being a prior SQR by the Services Head Quarters for 36 aircrafts.
  - b. It violated the requirement of a Categorisation Committee deciding whether these aircrafts have to be purchased only from abroad

without them being manufactured in India with Transfer of Technology etc.

- c. It also violated the requirement of the Defence Acquisition Council, giving the final nod for the number of aircrafts to be purchased and whether they should be purchased in a ready to fly condition from abroad.

### **New Deal in Violation of Defence Procurement Procedures**

16. DPP, 2013, was in force at the time. Extracts of relevant provisions thereof are as below;

*Para 13:* All capital acquisitions shall be based on Services Qualitative Requirements (SQRs).

*Para 14:* The SQRs would be drafted by the user directorate at SHQ... Draft SQR would be circulated by SHQ to all concerned for obtaining their views/comments including other possible user directorates, maintenance directorate, HQ IDS, DRDO, Department of Defence Production (DDP), Director General of Quality Assurance (DGQA)/Director General of Aeronautical Quality Assurance (DGAQA)/ Director General Naval Armament Inspectorate (DGNAI), Directorate of Standardisation, Technical Managers and any other necessary department. These agencies will also be represented on the Staff Equipment Policy Committee (SEPC) for approving the SQRs. Records in respect of Qualitative Requirements (QRs) will be maintained by the User Service(s).

*Para 17:* SQR would invariably be finalized prior to seeking AoN for the scheme. A copy of SQRs duly approved by the respective SHQ authorities would be submitted along with the 'Statement of Case' for seeking AoN. No amendment of SQR is permissible thereafter. In an unforeseen situation, where an amendment to SQR becomes necessary after accord of AoN, the case should be resubmitted for revalidation of AoN earlier accorded.

*Para 18:* In order to seek Acceptance of Necessity, the Service Headquarters would prepare a Statement of Case...The statement of case would include the total quantities required...The statement of case would then be placed for consideration of the categorisation committee

*Para 20 a:* While examining procurement cases, the time taken in the procurement and delivery from foreign sources vis-à-vis the time required for making it in the country, along with the urgency and criticality of the requirement will be examined before deciding to proceed on

categorisation. Accordingly, the Categorisation Committees, while considering categorisation of all capital acquisition under the Defence Procurement Procedure (DPP), will follow a preferred order of categorisation, in decreasing order of preference, as indicated below:- Buy (Indian), Buy & Make (Indian), Make (Indian), Buy & Make, Buy (Global)

*Clause 20 b:* In accordance with the order or preference prescribed at Para 20a, all Statements of Cases (including cases under Chapter III “Procedure for Defence Shipbuilding” and cases under Chapter IV “Fast Track Procedure”) seeking AoN shall invariably contain (at para 6a of Appendix-A) a detailed justification for recommending categorisation as well as reasons why each of the higher preferred categorisation have not been considered suitable for the purpose.

A copy of relevant pages of Defence Procurement Procedure, 2013, are annexed and marked as **ANNEXURE P4 at Pages (\_\_\_\_\_to\_\_\_\_\_)**

17. *Quantity:* That authority to initiate a new procurement lies with the IAF Services Head Quarters (IAF SHQ hereinafter) as they have the requisite expertise to determine the quantities required and specification thereof. The DPP states, “*All capital acquisitions shall be based on Services Qualitative Requirements (SQRs)*”. After a widely consultative process amongst various institutions quantities are formalised in SQRs. IAF’s SQR was for 126 aircrafts. In unilaterally initiating a new deal in Paris and suddenly determining that *just* 36 aircrafts would be bought, highest public servants apparently

- (a) usurped IAF SHQ’s authority to initiate any new procurement
- (b) foreclosed IAF SHQ’s discretion to determine quantities required, &
- (c) compromised national security.

18. *Categorisation:* That on the basis of requirements specified in SQRs the ‘Categorisation Committee’ after consulting various institutions recommends the appropriate category under which the acquisition would proceed: that is, whether the equipment is fit to ‘Make’ in India, or to ‘Buy’ from Indian Vendor, or to ‘Buy’ from Global Vendor and then ‘Make in India’ under Transfer of Technology, or the *least preferred* option, that is whether the Government should ‘Buy’ all the quantities from a Global Vendor. Furthermore, if it opts for a lesser preferred category, the ‘Categorisation Committee’ is to give a detailed justification as to why the more preferred categories are being rejected. The sudden decision to forego the ‘Buy and Make in India’ by HAL under ‘Transfer of Technology’

route and instead buying all aircrafts in 'fly away' condition(a) usurped Categorisation Committee's authority and discretion and (b) compromised strategic objectives of earlier procurement process.

19. *AON from DAC*: That post the formulation of SQRs and recommendation from Categorisation Committee, final approval in the form of Acceptance of Necessity (AON) is granted by the Defence Acquisition Council (DAC). AON sets in stone all the specifications, quantities, and categorisation through which the procurement is to be processed and there is no scope for any change in any of the parameters laid therein without seeking fresh SQRs, fresh Categorisation Committee recommendation and a fresh AON. This applies to any new "add-ons" not already present in the earlier AON as well. The object of these stringent requirements is to prevent vested interests from altering any of the requirements and specifications laid down by the Services Head Quarters for collateral reasons. A *fait accompli* was presented to the DAC after usurping the authority & discretion of IAF SHQs and Categorisation Committee, and an *ex post facto* approval was taken on 13th of May, 2015.

20. *Discretion under Inter-Governmental Agreement (IGA)*: It has been stated by government spokesmen from time to time that this particular decision to purchase only 36 aircrafts in ready to fly condition was under an Inter-Governmental Agreement and therefore the normal procurement procedures could not apply. This is however not correct. That on the basis of a pre-existing AON from DAC, political executive's discretion is limited to the 'choice' of whether to adopt a competitive process or opt for IGA that allows it to choose a vendor from a country of its choice without inviting tenders in specific cases allowed to be processed under IGA. The 36 Rafale procurement did not meet any of the conditions under which an IGA could be initiated. The political executive does not have the authority and requisite expertise to choose the quantities to be procured, or categorisation, or any 'enhancements' that are not already a part of a pre-existing AON. Inexplicably, without any AON, on the 10th of April, 2015, the Prime Minister's announcement, by specifying the number of aircraft to be bought, and by specifying the categorisation to be adopted—i.e. Buy (Global) with no Make in India—foreclosed the discretion of several institutions and presented them with a *fait accompli*. *Ex post facto* AON from Defence Acquisition Council (DAC) was taken on 13th of May, 2015.

A copy of Finance Minister's statement disclosing the date of Acceptance of Necessity, dated 28.08.2018, is annexed to **ANNEXURE P1 at Pages ( \_\_to\_\_ )**

### **Ground of Urgency**

21. That the summary announcement for the new procurement was justified on twin grounds of high cost of procurement for 126 aircrafts and 'urgency' for acquisition of 36 aircrafts. The first ground is dealt with later. On urgency, as regards the original procurement process of 126 aircrafts, the then Defence Minister, Arun Jaitley, told Parliament on 8th of August, 2014 that,

*"The 18 direct fly away aircraft are expected to be delivered in three to four years from the signing of the contract. The remaining 108 license manufactured aircraft in India are expected to be delivered during the following seven years."*

Apparently, the Government was proceeding with the original procurement process with no hint of any emergent situation that required the drastic overturning of the deal as was done by the Prime Minister *suo moto* in Paris just a few months later. By the government's own admission, if the original procurement process had been completed on the 10th of April, 2015, 18 aircrafts in 'fly away' condition would have been delivered by April of 2019, and the remaining 108 that were to be manufactured in India would have been delivered by 2022. Reportedly, under the new deal, the first aircraft would not be inducted until September of 2019, i.e., a full four years after the old deal was summarily discarded. The last of the 36 would only be inducted by late 2022. And all these would be without the enhancements that were specified in the 2007 RFP. The enhancements would only be fitted post 2022 in India.

A copy of a report in *Indian Express* stating that there are no new 'India Specific Enhancements' & that all aircrafts under new deal will only arrive by 2022, dated 08.09.2018, is annexed to **ANNEXURE P1 at Pages ( \_\_to\_\_ )**.

A copy of MoD press release on then Defence Minister's statement on procurement timeline is annexed as **ANNEXURE P5 at Pages ( \_\_\_\_\_ to \_\_\_\_\_ )**

22. That regarding 'urgency' it is pertinent that the Defence Procurement Procedure provides a Fast Track Procedure for contingencies. The Fast Track Procedure reads as follows:

*“The adoption of FTP to meet urgent operational requirements will be authorised by special DAC meeting chaired by the RakshaMantri based on proposals moved by respective SHQs with the approval of the concerned Service Chief. This Committee would comprise of the Service Chief(s), Defence Secretary, Secretary (Defence Production), Secretary (R&D), Secretary Defence (Finance), Director General (Acquisition), HQ IDS (CISC) and other officials of the MoD as deemed necessary. The proposal would be processed by HQ IDS which will act as secretariat to the special DAC. Copies of the proposal/s would also be circulated to the other members of the committee. The projected requirement must be related to an operational situation foreseen as imminent or for a situation where a crisis has emerged without prior warning. The requirement, as projected, must identify the items required, their numbers, mode of procurement, broad Operational Requirements (ORs) / Services Qualitative Requirements (SQRs) desired and the time-frame within which they need to be inducted.”*

No proposal was prepared as required under the DPP to overturn the original decision and instead go in for 36 “ready to fly” aircraft. No emergent meeting of the Defence Acquisition Council was held at which the decision was taken to overturn the proposal that had been finalised after the most thorough examination and the widest consultation. Moreover, the Defence Procurement Policy document clearly states, *“The projected requirement must be related to an operational situation foreseen as imminent or for a situation where a crisis has emerged without prior warning.”* No situation of the kind had arisen. Indeed, it is impossible to sustain any claim that within the space of just two days an emergency had arisen which had to be met by acquiring aircraft which would be delivered four to seven years hence. Finally, as will be evident, this exceptional provision is intended not for strategic acquisitions like 126 planes over years and for decades. It is meant for meeting emergency needs of parts, components, and other items akin to working capital that may be urgently required in the event of an actual or imminent conflict. The decision of the government to abandon the acquisition process for 126 aircrafts with all its vital objectives, and go in for just 36 aircrafts, disregarding the requirements of the I.A.F. to be able to fight a ‘two front’ war, disregarding Make in India by HAL under Transfer of Technology, and in violation of all mandatory due procedures has no legitimate grounds.

A copy of relevant pages of Defence Procurement Procedure on Fast Track Procedure is annexed as **ANNEXURE P6** at **Pages ( \_\_\_\_\_ to \_\_\_\_\_ )**

## **New Deal**

23. That Mr. Anil Ambani is the Chairman of Reliance ADA group of companies whose dire financial health has been widely reported and insolvency proceedings have been initiated in the case of many of his companies. On 3rd of March, 2015, in an article in the *Hindu* newspaper about his foray into the defence sector, Mr. Ambani, disclosed of a meeting between Prime Minister and himself, in which the Prime Minister told Mr. Ambani,

*“Anil, do you know that even the tears we shed in this country are not our own? Every tear gas shell used by our security agencies is actually imported!”*

At the time Mr. Ambani was under investigated by the CBI for corruption in the 2G scam wherein public servants were bribed. At the time Mr. Ambani had no interests or investments in the defence sector. Mr. Ambani's companies were buried under a mountain of debt.

A copy of the article in *Hindu*, dated 03.03.2015, is annexed to **ANNEXURE P1 at Pages (\_\_\_\_\_to\_\_\_\_\_)**

24. That thereafter, Mr. Ambani acquired management control of Pipavav Defence & Engineering on 04th of March, 2015 by purchasing 17.77% stake in the company. A controlling stake of 36% was only acquired one year later on 16th of January, 2016. Pipavav Defence & Engineering was later renamed as Reliance Naval & Engineering. Reliance Naval & Engineering has been unable to fulfill the orders for Naval Offshore Patrol Vehicles which are long overdue. The company has a debt of Rs. 8000 crores and within 3 years of Mr. Ambani taking over insolvency proceedings had been initiated by its creditors.

A copy of Reliance's statement to SEBI disclosing completion of acquisition on 16.01.2016, dated 18.01.2016, is annexed to **ANNEXURE P1 at Pages (\_\_\_\_\_ to\_\_\_\_\_ )**

A copy of a report in *Business Standard* on Reliance Naval's dismal record of fulfilling orders & insolvency proceedings, dated 27.09.2018, is annexed to **ANNEXURE P1 at Pages (\_\_\_\_\_ to\_\_\_\_\_ )**

25. That on 10th of April, 2015, Mr. Ambani did not 'own' any company "engaged in the manufacture" of products and services mentioned in "List of Products and Services Eligible for Discharge of Offset Obligations," specified in Annexure VI to Appendix D of Offset Guidelines of Defence Procurement Procedures.

A copy of relevant pages of Offset Guidelines on Products/Services eligible for discharge of offset obligations is annexed to **ANNEXURE P1** at **Pages ( \_\_\_\_\_ to \_\_\_\_\_ )**

26. That during this time period negotiations under the original procurement process for 126 aircrafts were at an advanced stage. As mentioned earlier, in a press conference on 25th of March 2015, Mr. Eric Trappier, the C.E.O, of Dassault, in the presence of the Chief of Indian Air Force and Chairman of H.A.L stated,

*“After an outstanding amount of work and some discussion, you can imagine my great satisfaction to hear, on one hand from the Indian Air Force chief of staff that he wants a combat proven aircraft which could be the Rafale...and on the other hand from HAL chairman that we are in agreement for the responsibilities sharing, considering as well our conformity with the RFP (Request for Proposal) in order to be in line with the rules of this competition. I strongly believe that contract finalisation and signature would come very soon.”*

Apparently, just 15 days before the new deal was signed, Dassault was not only in final stages of negotiations with India for 126 aircrafts, but HAL, was to be Dassault's partner in India for manufacturing and Make in India through Transfer of Technology was on the table. Clearly, the Indian Air Force Chief, Dassault's C.E.O, and the H.A.L. chairman were unaware of any new impending deal.

27. That Mr. Ambani incorporated a company called Reliance Defence Ltd. on 28th of March, 2015, just 12 days before the new deal was suddenly announced on the 10th of April, 2015.

A copy of the certificate of incorporation is annexed to **ANNEXURE P1** at **Pages ( \_\_\_\_\_ to \_\_\_\_\_ )**

28. That no formal opinion of IAF, HAL, the Foreign Ministry, and the Defence Ministry was sought on the new deal. The Foreign Minister was not present in France. The Defence Minister was in Goa. While the Foreign Minister & Defence Minister did not accompany Prime Minister to France, Mr. Ambani was a part of the Prime Minister's Business Delegation.

#### **DPP bypassed for collateral considerations**

29. That in the earlier deal of 126 aircrafts which was being negotiated, there would be no offset contracts since 108 aircrafts out of these were to be manufactured in India by HAL under an arrangement of transfer of technology from Dassault. However, in the new deal of 36 aircrafts to be

purchased in a 'fly-away' condition from France, a requirement of giving 50% of the value of the contract by way of offset contracts to Indian companies engaged in the manufacture of eligible defence products was introduced. This paved the way for giving the bulk of the offset contracts to Mr. Anil Ambani's companies. It has subsequently transpired that the requirement of making Mr. Anil Ambani's companies as the offset partner for Dassault in the new deal came from the Indian government itself.

30. That the then French President, Mr. Hollande, has admitted that,

*"We didn't have any say in this matter," Hollande told MediaPart. "It is the Indian government which had proposed this service group, and Dassault who negotiated with Ambani. We didn't have the choice, we took the interlocutor who was given to us."*

Mr. Hollande, has further corroborated that Mr. Anil Ambani was suggested to the French as, *"part of the new formula of the Indian Government."*

A copy of a translation of *Mediapart's* report, published on *The Wire*, dated 21.09.2018, is annexed to **ANNEXURE P1** at **Pages (\_\_\_\_\_to\_\_\_\_\_)**

A copy of a report on *Scroll*, about President Hollande's interview subsequent to the report in *MediaPart*, dated 23.09.2018, is annexed to **ANNEXURE P1** at **Pages (\_\_\_\_\_ to\_\_\_\_\_)**

31. That the Prime Minister was responsible for the "new formula" is evidenced by the statements made by the then Defence Minister. Three days after the deal, then Defence Minister, Manohar Parrikar made it clear to Doordarshan on 13th of April, 2015, that, *"Modi-ji took the decision; I back it up."* Elaborating to NDTV, he described the decision as, *"the outcome of discussions between the Prime Minister [of India] and the President of France."*

A copy of a report in *Business Standard* quoting Mr. Parrikar, dated 23.11.2017 is annexed as **ANNEXURE P7** at **Pages (\_\_\_\_\_to\_\_\_\_\_)**

32. That internal papers of Dassault's trade unions show that they were told that agreeing to set up a Joint Venture with Mr. Ambani's company was "imperative and mandatory" for Dassault and a "trade off" to secure the contract for 36 fighter aircrafts.

A copy of a report in *The Wire* dated 10.10.2018 is annexed as **ANNEXUREP8** at **Pages (\_\_\_\_\_to\_\_\_\_\_)**

33. That in less than a week of the announcement of the new deal, stories had appeared in the French media as regards Mr. Ambani's involvement.

On the 17th of April, 2015, a French strategic and defence website, in the context of the cancellation of the new deal being signed reported that,

*(The new deal), "At the political level, is for Narendra Modi, to demonstrate that India is a reliable partner and reaffirm his authority ...and at the same time, he (is) devoted to the rise to power of the private consortium Reliance Ambani family, one of his main financial support(ers), (whom) he would like to see play a greater role in the defence industry."*

A copy of a translation of the report on *TTU Online: Strategic & Defence Newsletter*, a French portal, dated 17.04.2015, is annexed to **ANNEXURE P1** at **Pages (\_\_\_to\_ \_\_\_\_\_)**

34. That within days of the announcement of the new deal. Mr. Ambani, on 24th of April, 2015, incorporated a new firm called Reliance Aerostructure Limited (RAL). As per Dassault Aviation's official press release, the Joint Venture between Dassault and RAL. i.e. Dassault Reliance Aerospace Limited (DRAL) was created in April of 2015. This is astounding given that the final agreement for the main procurement contract was only signed on 23rd of September, 2016, and further corroborates President Hollande's statement that Mr. Ambani's Reliance was suggested by the "Indian side" during the Prime Minister's visit to France. A copy of Dassault Aviation's press release stating that the Joint Venture was created in April of 2015, dated 23.04.2018, is annexed to **ANNEXURE P1** at **Pages (\_\_\_\_\_ to \_\_\_\_\_)**

35. That the offset obligations were increased from 30% to 50% after the joint statement. French were reportedly uncomfortable with the increased offset requirements. Consequently, the new deal that was presented as the outcome of urgent requirement of IAF, was held up because of a dispute on offsets. Offset obligations are waivable, however it is clear that notwithstanding the "urgency" ground, the deal was stuck on account of offsets to be received by Mr. Ambani. It was reported by PTI in May of 2016, that,

*"The French side finally agreed to invest 50 per cent of the value following a phone conversation between Modi and French President Francois Hollande late last year."*

The then Defence Minister, Manohar Parrikar, was quoted in the report as saying saying,

*"We started the process only in July last year. After Prime Minister's statement in April, everything came to us." he said*

A copy of a PTI release as published in *Economic Times* on 27.05.2016, is annexed to **ANNEXURE P1** at **Pages (\_\_\_\_\_ to\_\_\_\_\_)**

36. That post the Prime Minister's call to President Hollande, on 24th of January, 2016, Mr. Ambani's Reliance Entertainment announced an investment in President Hollande's partner, Julie Gayet's, French film through her company *Rouge International*. Payments to the tune of 1.48 million Euros were eventually made. Just two days thereafter, on 26th of January, 2016, Prime Minister and Mr. Hollande signed a Memorandum of Understanding for the 36 Rafale aircrafts. Given that at this time the main procurement contract hadn't been signed, this evidences that Mr. Ambani was acting to ensure the successful conclusion of the main procurement contract, in order to be able to receive benefits by way of offsets.

A copy of a report in *Indian Express* disclosing the said investment by Reliance, dated 31.08.2018, is annexed to **ANNEXURE P1** at **Pages (\_\_\_\_\_ to\_\_\_\_\_)**

A copy of a report in *Business Today* disclosing the quantum of investment, dated 26.09.2018, is annexed to **ANNEXURE P1** at **Pages (\_\_\_\_\_ to\_\_\_\_\_)**

#### **Raksha Mantri's approval and perverse influence on MoD**

37. That in terms of the requirements of the Offset Guidelines, on the 23rd of September, 2016, the main procurement contract was officially signed along with the Offset contract and Mr. Ambani's RAL was approved as the offset partner. **Clause, 2.4**, of the Offset guidelines states "*A separate offset contract will be executed simultaneously with the main contract*"

38. That under the influence of the government; the MoD has stated that it is unaware of Dassault's offset partner. The government has stated that it has no role in the selection of the offset partner.

39. That the aforesaid contention of the government goes against its own guidelines. Prior to the offset contract being signed, every vendor is to submit offset proposals to MoD for approval. *Clause 7*, of Offset Guidelines deals with '*Submission of Offset Proposals*'. Per *Clause 7.2*, the offset proposal is submitted in two parts. Technical Proposal and Commercial Proposal. It states,

*"The technical and commercial offset proposals should be submitted in two separate sealed covers to the Technical Manager of Acquisition Wing."*

40. That *Clause 8* deals with '*Processing of Offset Proposals*'. Per *Clause 8.4*,

*“The Commercial Offset Offer will contain the detailed offer specifying the value of the offset components, with a breakdown of the details, phasing, Indian Offset Partners”*

41. That the requirements for submitting the Commercial Offset Offer are detailed in Annexure III to Appendix D of DPP which states,

*“Note: Vendor to provide following along with commercial offset offer: -(a) Undertaking that IOP is an eligible offset partner as per applicable guidelines.*

*(b) Company profile of IOP/agency.*

*(c) Details with values of the proposed offset, including details of Tier-1 sub-contractors, if any.*

*(d) Letter of IOP/agency confirming acceptance of the offset project in case of direct purchase or investment.”*

42. That *Clause 8.6* requires that all offset proposals have to be approved by the RakshaMantri. It states, *“All Offset proposals will be processed by the Acquisition Manager and approved by RakshaMantri, regardless of their value.”*

43. That in light of the aforementioned requirements of the Offset Guidelines, MoD distancing itself from its own well thought out procedures and instead eschewing its responsibility is absolutely incredible and needs investigation. Procedures laid down were not followed.

44. That moreover, there is the Defence Offset Management Wing (DOMW) in the MoD which is meant to monitor the discharge of offset obligations.

*Clause 6.1(b) of Offset Guidelines states, “The functions of DOMW will include Monitoring the discharge of offset obligations, including audit and review of yearly progress reports received from vendors”*

*Clause 8.8, of Offset Guidelines relates to Six Monthly Reports and states, “The vendor shall submit six monthly reports in the format in Annexure V to Appendix D to the DOMW. DOMW may conduct an audit by a nominated officer or agency to verify the actual status of implementation.”*

Furthermore, *Clause 8.11* of the Offset Guidelines relates to *Change in IOP* and states, *“DOMW may recommend change in offset partner or offset component on being convinced that the change is necessary to enable the vendor to fulfil offset obligations.”*

45. That in light of the annual monitoring requirements by DOMW, the requirement for the vendor to submit six monthly reports of which an audit may be ordered and status of implementation verified, and DOMW's power to recommend a change in the Indian Offset Partner on being convinced that change is necessary to enable the vendor to fulfill offset obligations, government's contention that they are unaware of Dassault's Indian Offset Partner is untenable. It needs to be ascertained as to what is the source of the influence due to which duty bound public servants within MoD are being prevented from discharging their obligations. All these procedures have not been followed by the MoD.

A copy of relevant pages of Offset Guidelines is annexed and marked as

**ANNEXURE P9** at **Pages ( \_\_\_\_\_ to \_\_\_\_\_ ) RAL as**

### **Offset Partner**

46. That no credible explanation has been provided as to why Dassault would freely 'choose' a heavily debt ridden company with no experience in the defence sector as its offset partner.

47. That after public criticism of the deal, Dassault stated that they chose RAL because it had land with the facilities of apron. But when the Joint Venture agreement was signed in April of 2015, RAL did not have any land or industrial license. RAL's application for 289 acres of land in Mihan was made on 16th of June, 2015. At the handover ceremony for the land, Mr. Ambani stated that the land was granted to him in a "record time" of 10 weeks. The land was granted at a throwaway price of Rs. 63 crores for 289 acres on the promise of an investment of 6500 crores of Rupees for the development of an Aerospace Park.

A copy of a report in *Live Mint* on the land granted in Mihan, dated 28.08.2015 is annexed as **ANNEXURE P10** at **Pages ( \_\_\_\_\_ to \_\_\_\_\_ )**

A copy of a report in *Times of India* disclosing that 289 acres of land was granted for 63 crores of which 104 acres was acquired by February of 2017 for a payment of 25 crores, dated 04.02.2017 is annexed as **ANNEXURE P11** at **Pages ( \_\_\_\_ to \_\_\_\_ )**

48. That no capital investment was made for the development of the said Aerospace Park by RAL from August, 2015 until 31st of March, 2017. The total assets of RAL remained at Rs. 25.49 crores, which was the value of the land that had been acquired until then. RAL made no capital investment towards the development of the land acquired despite the promise to invest Rs. 6500 crores and was squatting on the land. It was

awaiting to sign a JV with Dassault for the purposes of securing the Offset Contract. Investments made thereafter were by Dassault Aviation and not RAL.

A copy of relevant page of *Annual Report* of Reliance Industries Limited (RIL) for 2015-16, disclosing Total Assets of RAL until 31.03.2016, is annexed to **ANNEXURE P1** at **Pages (\_\_\_\_\_ to\_\_\_\_\_)**

A copy of relevant page of *Annual Report* of Reliance Industries Limited (RIL) for 2016-17, disclosing Total Assets of RAL until 31.03.2017, is annexed to **ANNEXURE P1** at **Pages (\_\_\_\_\_ to \_\_\_\_\_)**

49. That the very same land is supposed to be used for the Joint Ventures between Reliance and Thales which is a sub-vendor in the Rafale deal through which a portion of the total offset liabilities in the Rafale contract would be discharged. On the basis of this land, Mr. Ambani's companies are entering into J.V.'s with many companies. No capital investment is made by Mr. Ambani's many defence companies to develop the land which was granted for the 'Aerospace Park'. Mr. Ambani makes little investment in these defence companies, and they wait to sign J.V.'s with foreign companies responsible for execution of offsets.

A copy of a joint press release of *Reliance Defence Limited* (yet another company of Mr. Ambani) & Thales disclosing the formation of JV for "leveraging Thales offset commitment as part of Rafale contract", dated 21.06.2017, is annexed to **ANNEXURE P1** at **Pages (\_\_\_\_\_to )**

50. That Mr. Ambani applied and got various industrial licenses for a number of his defence companies on the same date i.e. 22nd of June, 2016. On the basis of the industrial licenses obtained *en masse*, and the land on which it is squatting, Mr. Ambani's effort has been to secure offsets in defence deals by being a J.V. partner with global vendor's responsible for discharge of offsets.

A copy of the Industrial Licenses obtained *en masse* by the various defence companies of Mr. Ambani on 22.06.2016 is annexed to **ANNEXURE P1** at **Pages ( \_\_\_\_\_to\_\_\_\_\_)**

51. That to this end numerous companies having no capital base have been incorporated and have obtained various licenses for manufacturing of helicopters, missiles, land and naval platforms, propulsion systems, unmanned aerial vehicles, naval vessels, "all kinds of night vision devices, sensors, navigation systems & surveillance equipments" and so on and so forth. At the time of grant of these licenses, Ms. Nirmala Sitharaman, was the Commerce Minister. She was later elevated to Defence.

## **RAL Approved in Violation of Offset Guidelines**

52. That procedures were not followed in granting the requisite approval of Raksha Mantri under Clause 8.6 of the Offset Guidelines. RAL, the company that was approved as the Indian Offset Partner by Raksha Mantri was not “engaged in the manufacture of eligible products and/or services” when the approval was granted.

*Per Clause 4.1 “Indian enterprises and institutions and establishments engaged in the manufacture of eligible products and/or provision of eligible services, including DRDO, are referred to as the Indian Offset partner (IOP).”*

RAL was incorporated on 24th of April, 2015. On 31st of March, 2016, RAL had total assets of Rs. 25.49 crores. On 31st of March, 2017, RAL’s total assets remained 25.49 crores of Rupees. The total assets of RAL during both these years, comprised of the land that Mr. Ambani secured for a throwaway value, in “record time”. Mr. Ambani made no capital investment for machinery or technology in this company. He had no intention of and did not manufacture anything through this company. On the 23rd of September, 2016, when the offset contract was signed, and prior to that when the approval was granted to RAL as an offset partner by the Raksha Mantri, it was not “engaged in the manufacture” of any eligible products and/or provision of eligible services.

53. Furthermore, as of date RAL is in violation of Clause 4.2 of the Offset Guidelines dealing with the Indian Offset Partner (IOP).

*Per Clause 4.2 “The IOP shall, besides any other regulations in force, also comply with the guidelines/licensing requirements stipulated by the DIPP as applicable.”*

Under the Industries (Development and Regulation) Act, the Department of Industrial Policy and Promotion (DIPP) authorises the location of the industrial unit and the article that is permissible to be manufactured. All the licenses granted *en masse* to various companies of Mr. Ambani were for setting up of industrial units in Amreli in Gujarat. In RAL’s case, the license was granted specifically for “Manufacture and Upgrade of Airplanes and Helicopters *Specially Designed for Military Application*”. Section 11 of Industries Act, governs conditions as regards location. Section 11A covers conditions as regards manufacture of any ‘new article’ and states,

*“The owner of an industrial undertaking not being the central government which is registered under section 10 or in respect of which a license or*

*permission has been issued under section 11 shall not produce or manufacture any new articles unless —*

1. *Omitted*

2. *In case of an industrial undertaking in respect of which a license or permission has been issued under section 11, he has had the existing license or permission amended in the prescribed manner.”*

The DIPP's "*List Of Industrial Licences Issued For Manufacture Of Items Under Defence Industries From January 2011 To 3 July 2018,*" still records the location as well as the type of article to be produced by RAL as noted above i.e. for Amreli in Gujarat and for Military Airplanes and Helicopters. A copy of *List Of Industrial Licences Issued* by DIPP from January 2011 to July 2018 is annexed to **ANNEXURE P1** at **Pages (\_\_\_to\_\_\_)**

54. That parts for the civilian Falcon Business Jet would be made by RAL's joint venture with Dassault. The Falcon is a civilian business jet. This violates the condition of the licence that RAL obtained from the DIPP. RAL took a licence for "Manufacture and Upgrade of Airplanes and Helicopters *Specially Designed for Military Application*", and then entered into a JV to manufacture parts for a civilian aircraft under that same licence.

A copy of the Highlights of the *Letter* written by Mr. Ambani to Mr. Gandhi disclosing that "*not a single component worth a single rupee is to be manufactured by Reliance for these 36 Rafale jets*" dated 20.08.2018, is annexed to **ANNEXURE P1** at **Pages (\_\_\_\_\_to\_\_\_\_\_)**

A copy of the Joint press release by RAL & Dassault Aviation disclosing that their joint venture would manufacture parts of the Civilian Falcon Business Jet in Mihan is annexed to **ANNEXURE P1** at **Pages (\_\_\_\_\_to\_\_\_)**

55. That it has been claimed by the defence minister and various other government spokesmen that the original deal was jettisoned since HAL did not have the capacity to manufacture an advanced aircraft like Rafale. This was however denied by the former chairman of HAL, T. SuvaranaRaju who was the lead negotiator for the original deal and has dared the government to put the files in the public domain. He stated:

*"When HAL can build a 25-tonne Sukhoi-30, a fourth-generation fighter jet that forms the mainstay of the air force, from raw material stage, then what are we talking about? We could have definitely done it."* He added that, "*I was the leader of the technical team for five years and everything*

*had been sorted out...Dassault and HAL had signed the mutual work- share contract and given it to the government. Why don't you ask the government to put the files out in public? The files will tell you everything. If I build the planes, I will guarantee them."*

A copy of Mr. Raju's interaction with the *Hindustan Times* dated 20.09.2018, is annexed to **ANNEXURE P1** at **Pages ( \_\_\_\_\_ to \_\_\_\_\_ )**

56. That as Mr. Ambani's company is sought to be justified as a legitimate offset partner, and more suitable than HAL, a look at the balance sheet of Mr. Ambani's various defence companies as on 31st of March, 2018, is illuminating. Mr. Ambani's first foray into the defence sector was on, 22nd of December, 2014. Almost three and a half years thereafter, as of 31st of March, 2018, the two companies he had incorporated then had a total asset base of 1 lakh Rupees each. They are yet to commence business. The list of Mr. Ambani's defence companies is long. Suffice it to say that the same is the case for all of his other defence companies that have been given industrial licenses for helicopters, missiles, land and naval platforms, propulsion systems, unmanned aerial vehicles, naval vessels, "all kinds of night vision devices, sensors, navigation systems & surveillance equipments" etc. The total asset base of almost 13 of these companies is 56 Lakhs of rupees. Many were incorporated in 2015. The fact that Mr. Ambani has made close to nil capital investment over a period of three years in any of these companies is telling. Manufacturing hasn't commenced as regards these companies because Mr. Ambani has no intention of running any legitimate businesses in the defence sector. His group is in dire financial health and has no capital base to invest in any defence manufacturing business.

57. That the only two defence related companies (other than Reliance Naval & Engineering that is facing insolvency proceedings), that have some asset base are Reliance Aerostructure Limited (RAL) and Dassault Reliance Aerospace Limited (DRAL). RAL is a 100% subsidiary of Reliance Infrastructure and its asset base of Rs. 84.26 crores is the value of the 289 acres of land in Mihan & the investment that has come in from Dassault Aviation into their Joint Venture DRAL in which Dassault has already started investments as per Dassault's Annual Report as of 31st of December, 2017. For a total capital investment of less than Rupees 84 crores, Mr Anil Ambani has received an undue advantage worth thousands of crores as the key offset partner for Dassault and its various sub vendors such as Thales. And 289 acres of land in Mihan.

A copy of the relevant page of *Annual Report* of RIL disclosing the total assets of RAL and other defence companies of Reliance as on 31st of March, 2018, is annexed to **ANNEXURE P1** at **Pages** ( \_\_\_\_\_ to \_\_\_\_\_ )

A copy of the relevant pages of *Dassault's Annual Report* as of 31.12.2017 disclosing investments made by it in DRAL is annexed to **ANNEXURE P1** at **Pages** ( \_\_\_\_\_ to \_\_\_\_\_ )

### **Undue Advantage Received by RAL**

58. That there is a concerted attempt to cover up by stating varying figures regarding the quantum of offsets that are to be received by the Joint Venture DRAL. The following statement in the balance sheet from DRAL's parent company should make things clear. It states,

*"In the Aviation field, Reliance Defence has commenced multiple initiatives to meet the needs of both military and civil aviation. The proposed Dhirubhai Ambani Aerospace Park is one such initiative...To kick-off this project, our subsidiary Reliance Aerostructures has formed a Joint Venture Company with Dassault Aviation. The Joint Venture shall facilitate the transfer of high end technology, while discharging offset obligations of INR 30,000 crore. This is part of the agreement for purchase of 36 Rafale fighter aircraft for the Indian Air-Force."*

All the other figures now being put out through sources and press releases are an attempt at a cover up. Procedural violation has allowed Mr. Ambani to secure these thousands of crores of offsets.

A copy of the relevant pages from *RIL's Annual Report* stating the quantum of offset obligations to be discharged through DRAL is annexed as **ANNEXURE P12** at **Pages** ( \_\_\_\_\_ to \_\_\_\_\_ )

### **The escalation in cost against public interest: collateral considerations & abuse of authority**

59. That at the time when the RFP was floated in 2007, the total cost for 126 MMRCAs was estimated by Government to be Rs. 42,000 crores. The final price that was being negotiated under the deal is not in the public domain. But in an interview to Doordarshan, broadcast on 13th of April, 2015, soon after Prime Minister Modi signed the deal, the then Defence Minister Manohar Parrikar disclosed that the price for 126 aircrafts would have been about Rs. 90,000 crores. He stated that, "We must remember that Rafale is a top-end multi-role fighter . . . but it is quite expensive. When you talk of 126 aircrafts, it becomes a purchase of about 90,000 crores." That would place the price per aircraft at Rs. 715 crores (Rs.

90,000 crores divided by 126 planes). According to Parrikar this cost was inclusive of everything.

A copy of a report in *Business Standard* quoting Mr. Parrikar's statement, dated 15.04.2015, is annexed as **ANNEXURE P13** at **Pages (\_\_\_\_\_ to\_\_)**

60. That the Government of India has been insisting that it cannot disclose the price of the aircraft because of an Agreement of Secrecy with the Government of France. This claim is curious and contradicts an earlier statement of the government in parliament. In fact, on 18th of November, 2016, in response to a question asked in the Lok Sabha on the acquisition of fighter aircrafts, the MoS, Defence stated that,

*“Inter-Governmental Agreement with the Government of French Republic has been signed on 23.09.2016 for purchase of 36 Rafale aircraft along with requisite equipments, services and weapons. Cost of each Rafale aircraft is approximately Rs. 670 crore and all the aircraft will be delivered by April 2022.”*

A copy of the Government's reply in Lok Sabha dated, 18.11.2018, is annexed to **ANNEXURE P1** at **Pages (\_\_\_\_\_to\_\_\_\_\_)**

61. That nor was this disclosure a sudden leap in transparency. On earlier occasions also, notwithstanding the secrecy agreement of 2008, the cost of defence and aerospace equipment have been disclosed to Parliament and the people even when the procurement was from the same French companies as in this case. For instance, in the Press Release that it issued on 26 March 2012, regarding the *“Upgradation of Mirage Aircraft,”* the Ministry of Defence stated:

*“Contracts have been signed with M/s Thales, France and M/s Dassault Aviation, France, along with M/s Hindustan Aeronautics Limited (HAL) for upgrade of the Mirage 2000 aircraft of the Indian Air Force (IAF). A contract has also been signed with M/s MBDA, France, for procurement of air-to-air missiles for the Mirage 2000 aircraft. The cost of the contract for upgrade of the Mirage 2000 with M/s Thales and M/s Dassault Aviation is Euro 1470 Million, while the cost of the contract with M/s HAL is Rs. 2020 crore. The cost of the contract for procurement of the missiles from M/s MBDA, France, is Euro 958,980,822.44.*

A copy of MoD press release disclosing the details of upgradation of Mirage and giving component wise details of the missiles to be purchased from France, dated 28.03.2012 is annexed to **ANNEXURE P1** at **Pages (\_\_\_to\_\_\_)**

62. However the price of the 36 Rafale aircrafts disclosed by the government on the floor of parliament of 670 crores per aircraft turned out to be a gross understatement of the true prices. The actual price of 36 aircrafts was revealed in a Press Release by Dassault and Reliance Defence and Financial Statement of Dassault for 2016. Both the documents show the total price of the deal to be about Rs. 60,000 crores (about 8.139 Billion Euros) for 36 aircrafts. This is what is embarrassing for the government for it works out to Rs. 1,660 crores per plane. This is more than double the price of the aircraft under the earlier 126 MMRCA deal. And almost Rs. ONE THOUSAND CRORE HIGHER PER AIRCRAFT than the price that was furnished by Government itself to Parliament on 18th of November, 2016.

A copy of the Joint press release of Dassault & Reliance, disclosing the price of 36 aircrafts, dated 16.02.2017, is annexed to **ANNEXURE P1** at **Pages (\_\_\_\_to\_\_\_\_)**

A copy of the relevant pages of Financial Statement of Dassault Aviation disclosing the price of 36 aircrafts, as of 31.12.2017, is annexed to **ANNEXURE P1** at **Pages ( \_\_\_\_\_to\_\_\_\_\_ )**

63. That the original RFP had clearly stated that in addition to the costs of direct acquisition, the cost of the aircraft would include cost of weapons and missiles, warranty for the first two years, license royalty for manufacture in India, of technology transfer as well as the cost of initial training. There is an attempt to mislead by claiming that the increase in price is on account of any 'India Specific Enhancements'. This assertion is given the lie by the India-France Joint Statement of 10th of April 2015 which states explicitly that,

*“The two leaders agreed to conclude an Inter-Governmental Agreement for supply of the aircraft on terms that would be better than conveyed by Dassault Aviation as part of a separate process underway; the delivery would be in time-frame that would be compatible with the operational requirement of IAF; and that the aircraft and associated systems and weapons would be delivered on the same configuration as had been tested and approved by Indian Air Force, and with a longer maintenance responsibility by France.”*

As reported by the *Indian Express* there is no new 'India Specific Enhancements' in the new procurement for 36 aircrafts.

64. That as per the Offset Guidelines, the normal offset obligation is 30% of the total procurement price. The offset obligations can be waived by the DAC. It is also permissible to raise the obligations to 50%. Knowing in

advance that Mr. Ambani was to be the key offset partner; it was ensured that the offset obligation was increased to 50%. But as per the joint statement of 10th of April, 2015, Dassault had committed to providing the new 36 Rafale aircrafts at the same or better price as was in the original deal.

65. That the price of the aircraft was increased by first getting the benchmark price increased very substantially (almost doubled) as compared to the benchmark price recommended by an expert team led by Mr. MP Singh. This benchmark price had been discovered after a detailed study and after taking into account the views of experts. Manifestly, the cost of manufacturing the aircraft by HAL in India would have been substantially higher than the cost of Rafale fighters procured in the “fly-away condition”. That is because, to manufacture in India, additional costs would have had to be incurred for setting up the requisite infrastructure and the plant, establishing the supply chain, developing vendors, etc. The supplier would also have charged a heavy fee for transfer of technology. Therefore, the price of the Rafale fighter in “fly- away condition,” built in an already running plant in France, would have been substantially less than Rs. 715 crores which is what the total cost on average would have been as per Mr. Parrikar’s own admission for the entire lot of 126 aircrafts. This is why the benchmark price discovered by the expert committee was lower for the 36 Rafale aircrafts because all these additional costs of setting up supply chain in India, of developing vendors in India, of creating the requisite infrastructure and plant in India, of transfer of technology would have been saved by Dassault Aviation in the 36 aircraft deal.

66. That when at least three members of the Contract Negotiation Committee (CNC) objected in writing, some were promptly sent on leave. Significantly, the objections were raised by Sh. Rajeev Verma, then Joint Secretary (Air) and Sh. AR Sule, then FinanceManager (Air). Overruling of their objections and the benchmark price discovered by the experts was *mala fide* and under the influence of high public servants. An artificially inflated benchmark price was created to comply with the condition of the joint statement, that the price of the new deal would be on same or better terms as compared to the earlier deal.

A copy of a report in *The Wire* disclosing the objections made within CNC, dated 27.09.2018 is annexed as **ANNEXURE P14** at **Pages (\_\_\_\_\_ to\_\_)**

A copy of a report in the *Economic Times* disclosing the objections made within CNC, dated 29.09.2018, is annexed as **ANNEXURE P15** at **Pages (\_\_\_\_to\_\_\_\_)**

67. That without following mandatory processes of seeking SQRs from the IAF Services Head Quarters, Categorization Committee's recommendation, etc. or floating an RFP for the 'add on' packages, it was arbitrarily decided that some additional equipment would be purchased from the French, for which Dassault would not have been committed by the Joint Statement, and could therefore make up for the increased offset obligations by charging inflated prices for these 'add on' weapons. As these 'add-ons' are in the nature of weapons and missiles, a separate procurement process was required to be initiated for the same, as per the requirements of the IAF.

68. That by influencing the manner in which the benchmarking was determined, and influencing the decision of the Contract Negotiation Committee, and by agreeing to purchase a few additional weapons at highly inflated prices without following the mandatory procedures, it was ensured that the price per aircraft was increased by almost 1000 crores of rupees more each so that the final offset obligation and the undue advantage to be taken by Mr. Ambani was as high as possible. This is why the MoD is now being prevented from disclosing the price of the procurement to the public and also the component-wise breakdown, because that is where the corruption has occurred. As apparent from MoD press release of 2012 disclosing the price of Mirage and the missiles to be fitted on them, reference to the 2008 secrecy agreement with France is just a pretext. This shows that perverse influence is being exercised over the MoD officials.

69. The above facts clearly disclose offences under S. 7 and S. 13 of the Prevention of Corruption Act. The relevant facts which disclose these offences are summarised below:

- That high ranking public servants, unilaterally, in violation of all mandatory procedures, without obtaining any SQRs from the IAF, or any decision of the Categorisation Committee or any Acceptance of Necessity from the Defence Acquisition Council, entered into a Memorandum of Understanding with the French regarding purchase of *just* 36 Rafale aircrafts, all in a 'fly away' condition with no Transfer of Technology and no Make in India.
- That they did so after virtually scrapping the earlier procurement process for 126 aircrafts, which had followed all due procedures, and

was in accordance with the specifications of the Indian Air Force. In the process, all important strategic objectives of the earlier procurement procedure that were on the basis of institutions authorised to do so, were eschewed. Consequently, *just* 36 aircrafts were arbitrarily purchased, with no make in India and no Transfer of Technology against the determination of IAF Services Head Quarters, the Categorisation Committee and the Defence Acquisition Council.

- That under the earlier deal, HAL was to be the production agent for Dassault in India and there was no scope for Mr. Ambani to be a offset partner.
- That this act of unilaterally changing the deal by bypassing all laid down procedures, was to ensure that Mr. Ambani could be brought in as an offset partner for the purpose of obtaining for him offsets worth thousands of crores.
- That the French government as well as the Dassault Aviation company were told that this contract of 36 'ready to fly' aircraft will be only given to Dassault Aviation, if they gave the major part of the offset contracts in this deal to Mr. Anil Ambani's company.
- That Mr. Anil Ambani's recently incorporated company had no credibility or even eligibility to be an offset partner for Dassault. That therefore, the thousands of crores to be received by RAL through the offset contract are substantially in the nature of commissions.
- That the price of the aircrafts in the new deal has been increased from approximately 700 crores per aircraft to over 1600 crores per aircraft without any legitimate public interest.
- That the facts mentioned above show two things; (a) that Indian public servants asked Dassault to give the major offset contracts in this deal to Anil Ambani's defence company as a condition for getting the contract; & (b) that the offset contracts worth tens of thousands of crores which have been awarded to Reliance are not and cannot be considered to be legal remuneration for services actually rendered or services which could credibly be rendered by Reliance Aerostructure Limited. Therefore, these offset contracts and the payments made/to be made for them are at least in large part in the nature of undue advantage/illegal gratification/commissions to be paid to the Reliance under this deal. It is clear therefore that public servants in India have abused their positions to give an undue advantage to Anil Ambani's Reliance company as a consideration for the discharge of his

function as a public servant to award the contract of purchasing 36 Rafale jets from Dassault in a 'fly away' condition.

70. That in light of all the facts stated above the Petitioners prayer to the Hon'ble Court, is for directions to the CBI. to register an FIR on the complaint that they have filed on 04th of October, 2018 against the persons named therein and to investigate the very serious abuse of authority by the Prime Minister and other persons involved by gross violation of mandatory procedures that has resulted in corruption amounting to thousands of crores of rupees and compromised the national security of the country. The petitioners also pray that the investigation be monitored by the Hon'ble Court to ensure an independent, robust, and fair investigation, free from the influence of the powerful people involved, an investigation that can be completed in a time bound manner.

71. The petitioners have not filed any other writ, petition, application, claim, or suit regarding the above matter in this Hon'ble Court or any other court throughout the territory of India. The petitioners have no better remedy available.

#### GROUNDS

A. Because high ranking public servants have abused their position in making a new deal without following the laid down procedures in order to obtain a valuable thing in the nature of offset contracts for Mr. Ambani. This has resulted in increase in price of procurement and provided a pecuniary advantage to both —Dassault as well as Mr. Ambani's RAL This would amount to Criminal Misconduct under section 13(1)(d)(ii) of the Prevention of Corruption Act, as applicable on the date of commission of offence.

B. Because public servants presiding over the government got the critical persons involved and Contract Negotiation Committee to increase the contract price of the 36 Rafale aircrafts from Rs. 715 crore per aircraft as disclosed by Mr. Parrikar to Rs. 1660 crore per aircraft. This resulted in a pecuniary advantage to both, Dassault Aviation and also Mr. Ambani's RAL This amounts to Criminal Misconduct under section 13(1)(d)(iii) of the applicable Prevention of Corruption Act. There was clearly no public interest involved in allowing such a huge increase in the price of the aircraft which were to be paid out of the public exchequer. In this offence, the other members of the Contract Negotiation Committee as well as the Defence Minister would be complicit and would be abettors.

C. Because public servants inducing Dassault Aviation to give thousands of crores worth of offset contracts to Mr. Ambani's company, which has no credibility or track record in manufacturing defence equipment amounts to taking commission and therefore amounts to an offence under section 7 of Prevention of Corruption Act. These contracts cannot be said to be legal remuneration for services rendered or to be rendered credibly by Reliance Aerostructure Limited company.

D. Because the record shows beyond the shadow of a doubt that mandatory procedures have been violated with impunity.

E. Because the record also shows that these have not been violated for strengthening the defence of the country, that in fact the results obtained through the gross violations of mandatory procedures gravely undermine the country's security.

F. Because the record clearly shows that the mandatory procedures have been violated solely to ensure undue advantages to a private individual and his sham firms.

G. Because the non-registration of FIR by the CBI. in the complaint made to it is a violation of the law laid down in **Lalitha Kumari v. Government of Uttar Pradesh & Ors (2014) 2 SCC 1** and is thus a violation of Article 14 and 21 rights of citizens of the country.

H. Because the accused persons are occupying the highest of public offices and are in a position to influence the CBI and its officials. The accused are abusing the high offices they hold to intimidate and influence the officials of the CBI. It is imperative that the CBI be insulated from such adverse influence by directing a Court-monitored investigation.

I. Because the non-registration of FIR by the CBI in this particular complaint for over three weeks as on 24.10.2018 is arbitrary and illegal. It points to the fact that the CBI is under pressure from the powers that be to bury this matter.

J. Because the non-registration of the FIR and investigation is allowing the offence of corruption to go unchecked and monies are being received by Mr. Ambani's RAL from Dassault Aviation. These monies are being directed towards the manufacture of the wings of a Civilian Business Jet, which is a violation of the license that was granted to RAL and against the object of India's offset policy.

K. Because the accused persons are already in notice of the complaint made against them and there is an attempt to cover up the entire scam. It is imperative that documentary evidence not be allowed to be destroyed.

## PRAYER

In these circumstances, it is therefore most respectfully prayed that your Lordships may graciously be pleased to:

- a. Issue writ of mandamus or any other appropriate writ directing Respondent No. 1 to register an FIR on the complaint that was made by the Petitioners on the 04th of October, 2018.
- b. Issue writ of mandamus or any other appropriate writ directing the Respondent No. 1 to investigate the offences disclosed in the said complaint in a time bound manner and to submit periodic status reports to the Court.
- c. Issue writ of mandamus or any other appropriate writ directing the Respondent No. 2 to cease and desist from influencing or intimidating in any way the officials that would investigate the offences disclosed in the complaint.
- d. Issue writ of mandamus or any other appropriate writ directing the Respondent No. 1 & Respondent No. 2 to not transfer the CBI. officials tasked with investigation of the offences mentioned in the complaint.
- e. Issue writ of mandamus or any other appropriate writ to ensure that the relevant records are not destroyed or tampered with and are transferred to the CBI..
- f. Pass such other orders or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present petition.

AND FOR THESE ACTS OF KINDNESS, THE PETITIONERS, AS IN DUTY BOUND, SHALL EVER PRAY.

New Delhi

Filed on: \_\_\_\_\_ of October, 2018

Petitioners in Person

(YASHWANT SINHA)

(ARUN SHOURIE)

(PRASHANT BHUSHAN)