

A M/s. DAIICHI SANKYO COMPANY LIMITED

V.

OSCAR INVESTMENTS LIMITED & ORS.

(Special Leave Petition (C) No. 20417 of 2017)

B SEPTEMBER 22, 2022

[UDAY UMESH LALIT, CJI, INDIRA BANERJEE AND
K.M. JOSEPH, JJ.]

C Contempt of Court – Held: Contemnor Nos. 9 and 10 were held guilty of committing contempt of the orders passed by the High Court and Supreme Court – They were given an opportunity to purge themselves of contempt – However, the kind of assets offered by Contemnor Nos.9 and 10 in their affidavit are so inadequate that it is impossible to satisfy the amount awarded in favour of the petitioner in the foreign arbitral award – Thus, said Contemnors have failed to purge themselves of contempt – Considering the enormity of their actions, Contemnor Nos.9 and 10 sentenced to suffer the maximum sentence i.e., six months imprisonment – Fine of Rs.5,000/- imposed for having committed contempt of court with default sentence of two months – Further, regarding the role played by the noticee banks and financial institutions, no directions are being passed against them for the present but the executing court or any other authority competent to exercise such power shall do well to appoint forensic auditor(s) to undertake proper exercise to unravel the truth – Directions issued.

F *Delhi Development Authority v. Skipper Construction* (2007) 15 SCC 60 I : [2005] 3 SCR 313; *Supreme Court Bar Association v. Union of India* (1998) 4 SCC 409 : [1998] 2 SCR 795; *Satya Brata Biswas v. Kalyan Kumar* (1994) 2 SCC 266 : [1994] 1 SCR 413; *Traders Private Ltd. v. Tosh apartments Private Ltd* (2012) 8 SCC 384 : [2012] 10 SCR 307; *Rosnan Sam Boyce v. B.R. Cotton Mills Ltd.* (1990) 2 SCC 636 : [1990] 2 SCR 381 – referred to.

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Case Law Reference

[2005] 3 SCR 313

referred to

Para 19

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[1998] 2 SCR 795	referred to	Para 19	A
[1994] 1 SCR 413	referred to	Para 19	
[2012] 10 SCR 307	referred to	Para 19	
[1990] 2 SCR 381	referred to	Para 19	

CIVIL APPELLATE JURISDICTION : Special Leave Petition B
(C) No.20417 of 2017.

From the Judgment and Order dated 21.06.2017 of the High Court of Delhi at New Delhi in CCPO No.21 of 2017.

With

Contempt Petition (C) No.2120 Of 2018 In Special Leave Petition (C) No.20417 of 2017 and Suo Motu Contempt Petition (C) No.04 of 2019.

Mukul Rohatgi, Rakesh Dwivedi, Jaideep Gupta, Krishnan Venugopal, Arvind P. Datar, Kailash Vasdev, Harish N. Salve, Rajiv Nayar, Gaurav Pachnanda, Ms. Meenakshi Arora, Shyam Divan, C.U. Singh, Jayant Mehta, Sr. Advs., Amit Kumar Mishra, Eklavya Dwivedi, Mohit Singh, Ms. Samridhi Hota, Ms. Kanika Singhal, Shivam Pandey, Turab Ali Kazmi, Ms. Saloni Agarwal, Rohan Jaitley, Aditya Shankar, Jaiveer Shergill, Kunal Chatterji, Keshav Dhingra Sehgal, Shivendra Singh, Ms. Maitrayee Banerjee, Pravar Veer Misra, Rahul Unnikrishnan, Anuradha Dutt, Ms. Suman Yadav, Aditya Sarin, Tushar Jarwal, Ms. Neoma Vasudev, Shobhit Ahuja, Ms. B. Vijayalakshimi Menon, H.S. Chandhoke, Sanjeev Kumar, Saleem Ansari, Vaibhav Kakkar, Abhishek Kisku, Anshul Sehgal, Sahil Arora, Rohit Dahiya, Faisal Sherwani, Ms. Ruby Singh Ahuja, Vishal Gehrana, Ms. Kritika Sachdeva, Anmol Jassal, Ms. Namrata Sinha, Ms. Avni Sharma, M/s. Karanjawala & Co., Vivek Jain, Nirvikar Singh, Zulfiqar Menon, Abhishek Singh, Manish Shekhari, Nitin Sharma, Ganesh Khemka, Anuj Berry, Abhik Chakraborty, Govind Manohar, Prateek Yadav, Ms. Anshula Laroiya, Shradul S. Shroff, Pratap Venugopal, Ms. Surekha Raman, Ms. Viddusshi Shandilya, Akhil Abraham Roy, Vijay Valsan, M/s. K J John & Co, Sandeep Devashish Das, Ms. Aishwarya Singh, Ms. Roopali Singh, Ms. Sayobani Basu, Ms. Durga Manda, Anant Misra, Mayank Pandey, Sandeep Joshi, Anang Shandilya, Sanjeev Prakash Upadhyaya, Sanjay Kumar Visen, Atul Sharma, Ms. Renuka Iyer, Abhishek Agarwal, Sanjay Gupta, Ateev Mathur, Amol Sharma, Gagan Gupta, Aman Raj Gandhi, Ms. Sanjana Arora, Ashwani

- A Kumar, Rishi Sethi, Vidhur Sikka, Ms. Sandhya Chawla, Kumar Gaurav, Ms. Ritu Reniwal, Robin Khokhar, Mahesh Agarwal, Rishi Agrawala, Ankur Saigal, Himanshu Satija, Nishant Rao, Ms. Mansi Taneja, Ms. Ayushi Aamod, E.C. Agrawala, Ms. Saman Ahsan, Ms. Srijata Majumdar, Ms. Monika Vyas, M/s. Khaitan & Co., Vinam Gupta, Alok Kumar, Ms. Somya Yadava, Ms. Drishti Harpalani, Uday Arora, G.N. Reddy, Varghese
- B Thomas, Hormuz Mehta, Ms. Tamoghna Goswami, Dheeraj Nair, Sameer Parekh, Sumit Goel, Ms. Sonal Gupta, Manu Bajaj, Ms. Nitika Pandey, M/s. Parekh & Co., Rohan Thawani, Hardeep Singh Anand, Advs. for the appearing parties.

The Judgment of the Court was delivered by

C **UDAY UMESH LALIT, CJI**

- 1. The present proceedings arise out of an action initiated by Daiichi Sankyo Company Limited (hereinafter referred to as “Daiichi”) for enforcing a Foreign Arbitral Award dated 29.04.2016 made in Singapore and passed in favour of Daiichi and against 20 Respondents
- D *i.e.* Respondent 1: Malvinder Mohan Singh, Respondent 2: Malvinder Mohan Singh as Karta of HUF, Respondent No.3: Malvinder Mohan Singh as Trustee of Bhai Hospital Trust, Respondent No.4: Japna M. Singh, Respondent 5: Nimrita Singh, Respondent 6: Shivinder Mohan Singh, Respondent 7: Shivinder Mohan Singh as Karta of HUF, Respondent 8: Aditi Singh, Respondent 9: Anhad Parvinder Singh,
- E Respondent 10: Kabir Parvinder Singh, Respondent 11: Udayveer Singh, Respondent 12: Vivan Singh, Respondent 13: Nimmi Singh, Respondent 14: Oscar Investments Ltd., Respondent 15: Malav Holdings Pvt. Ltd., Respondent 16: Modland Wear Pvt. Ltd., Respondent 17: Fern Healthcare Pvt. Ltd., Respondent 18: ANR Securities Pvt. Ltd., Respondent 19: F RHC Holdings Pvt. Ltd., Respondent 20: Oscar Traders (Partnership Firm) (“Respondents/ Judgment Debtors”), directing them to jointly and severally pay a sum of approximately INR 2562 crores with further additional pre-award interest (4.44%) and post-award interest (5.33%), in Arbitration Case No.19074/CYK. The Award was challenged in Singapore as well as in India but the objections were dismissed and the
- G Award became final. In the proceedings initiated for enforcement of said Award in the High Court¹, an objection was raised under Section 48 of the Arbitration and Conciliation Act, 1996 (for short, ‘the Act’). However, said objection was dismissed except insofar as original respondents No. 5 and 9 to 12, who were minors when the award was

H ¹High Court of Delhi at New Delhi.

declared. The further challenge in this Court to the rejection of the objection did not succeed and Special Leave Petition (Civil) No. 4276 of 2018 preferred therefrom was dismissed by this Court on 16.02.2018.

2. In the enforcement proceedings being OMP (EFA) (Comm.) No.6 of 2016 initiated by Daiichi, an apprehension was expressed that the Respondents were engaging in designs to move the assets outside the reach of Daiichi. It was submitted that Fortis Healthcare Holdings Private Limited (“FHHPL”) was a holding company under the control of the Respondents and the value of its shares was derived solely from the value of the downstream operating company- Fortis Healthcare Limited (“FHL”); and that FHL shares held by FHHPL were being sold/ encumbered by the Respondents. In said proceedings, an undertaking given by the learned counsel appearing for respondent Nos.14 and 19 was recorded by the High Court in its order dated 21.06.2017 in following terms:

“8. Since the petitioner has raised an issue with regard to the shareholding of Fortis Healthcare Holding Pvt. Ltd. in Fortis Healthcare Limited, the present order is being restricted to the value of the said unencumbered asset disclosed in the affidavit.

9. Learned Senior Counsel appearing for respondent no. 14 and 19 submits that the value of the unencumbered asset comprising of equity share in Fortis Healthcare Holding Private Limited has been disclosed as Rs.452.60 Crores by respondent no.14 and Rs.1889.30 crores by respondent no. 19.

10. Learned Senior Counsel appearing on behalf of respondent no. 14 and 19 undertakes that, irrespective of any transaction that the said respondent may enter into, the value as disclosed to the court would not be, in any manner, hampered or diminished.

11. The effect of the above statement of learned Senior Counsel for respondent no.14 and 19 is that the sum of Rs.2841.09 Crores (i.e. Rs.452.60 + Rs.1889.30 crores) would always be available and realizable as an asset of respondent no.14 and 19, in Fortis Healthcare Holding Pvt. Ltd. Towards the satisfaction of the decretal amount as and when the stages so arises.

12. The statement is taken on record and the undertaking accepted.”

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- A 3. In Special Leave Petition (Civil) No.20417 of 2017 the aforesated order dated 21.06.2017 is under challenge mainly on the ground that rather than recording said undertaking of the learned counsel, the High Court ought to have issued appropriate process to secure the assets of those against whom the Award was passed. As a matter of fact, the undertaking so recorded in the order dated 21.06.2017 was the fifth assurance / undertaking given by the learned counsel appearing for respondent Nos.14 and 19. Previous four such assurances were recorded by this Court in its judgment and order dated 15.11.2019² passed in *Vinay Prakash Singh vs. Sameer Gehlaut & Ors.* as under:

"Proceedings before the Delhi High Court

- C **The first assurance**
- D 4. During the enforcement proceedings, the petitioner filed I.A. No.6558 of 2016 before the High Court of Delhi praying that the respondents be restrained from alienating or encumbering their assets. The petitioner expressed an apprehension that the respondents would fritter away their assets which would make the award unenforceable. On 24.05.2016 Mr. Kapil Sibal, learned senior counsel appearing for the respondents assured the High Court that the interest of the petitioner will be protected. Though this assurance was not recorded by the Court, the same forms a part of the letter sent by the counsel for petitioner, relevant portion of which reads as follows:-

- F “1...Further, while directing that, inter alia, the Arbitration Award dated 29 April 2016, be kept confidential, a formal protective order has not been passed by the Hon’ble Court on the strength of duly instructed oral assurance tendered by Learned Senior Counsel Mr. Kapil Sibal (appearing for the Respondents) that the Petitioner’s interest would be protected to the extent of the total sum awarded under the Arbitral Award dated 29 April 2016, and there would be no fait accompli. Mr. Kapil Sibal had also submitted that even recording of his personal statement in the order would affect the respondents’ interest in the share market as some of his clients are listed in stock exchange.”

- G It appears that the respondents had urged before the Court that their assurance should not be recorded in the order of the Court,
- H ²"The judgement", for short.

since that might affect the value of their shares in the share market. A
This was the **first assurance** given by the respondents to the High Court of Delhi. It would be pertinent to mention that the fact that such an assurance was made is also recorded in the order of the High Court dated 23.01.2017 wherein Mr. Harish N. Salve, learned senior counsel appearing for the respondents 1 to 4 and 13 therein reiterated the assurance given to the Court as recorded in the letter dated 24.05.2016.

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The second assurance

5. On 25.07.2016, the High Court of Delhi passed an order directing the respondents to disclose the details of their immovable assets and also to disclose the details of assets that have been alienated and encumbered to third parties. It appears that during this period reports appeared in various newspapers that the respondents were disposing their stakes in subsidiary companies and were also clandestinely disposing of their assets. Left with no alternative, the petitioner filed an Interlocutory Application being I. A. No. 618 of 2017 before the High Court of Delhi in which the following prayer was made: -

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a. "Urgently pass an order directing the Respondents to secure the Award amount by depositing it with the Registrar of the Delhi High Court or by providing adequate security or by bank guarantee or by any other means that this Hon'ble Court may deem fit;

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b. Pass an order directing the attachment of the movable and immovable assets and properties of the Respondents, and any assets and properties in which the Respondents have any beneficial interests until the disposal of the present petition, at least to the extent of the amounts awarded in the Award;

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c. Pass an order restraining the Respondents and their group companies from selling, alienating or encumbering their movable or immovable properties/assets in any manner whatsoever;

d. Pass ex-parte, ad interim orders in terms of prayers (a), (b) and (c) above and confirm the same after notice to the Respondents;"

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On 23.01.2017, Mr. Harish N. Salve, learned senior counsel for some of the respondents before the High Court of Delhi reiterated the assurance given in the letter dated 24.05.2016 and sought two

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A weeks' time to furnish an affidavit by one of the respondents giving the details of assets of all the respondents. This was the **second assurance.**

The third assurance

B 6. The information was not provided in the manner sought by the High Court which is reflected in the order dated 06.03.2017. The order records that the respondents have been directed to furnish details of all unencumbered assets both movable and immovable and not merely the list of the investments, loans and advances as reflected in the affidavit filed by the respondents. The respondents were directed to furnish further details and the counsel for respondents had submitted that this would be done within 1 week. The High Court in its order dated 06.03.2017 clarified as follows:-

C “8. The Court would like to clarify that the above understanding by Respondent No.19 of what was required to be furnished in terms of the order dated 23rd January 2017 is not correct. The Respondents were in fact required to furnish the information relating to all the unencumbered assets, both moveable and immovable, and not merely investments and loans and advances.”

D 7. On 06.03.2017 Dr. Abhishek Manu Singhvi and Mr. Rajiv Nayar, learned senior counsel appearing for the respondents made a statement that the complete details/particulars of all unencumbered assets would be filed before the Registrar within one week. Certificates of Chartered Accountants of the respondents were also directed to be filed giving the following details: -

E F (i) “the value of all the unencumbered assets, including both movable and immovable assets of Respondents 14 and 19, both the book value as well as the fair value;

G (ii) where these assets include investments in equity shares, preference shares and debentures, to indicate to what extent are these investments in related/group entities of the Respondents and in companies whose shares are listed and which of these shares have a condition of right of first refusal.

H (iii) a clarification as to how much of the borrowings reflected in the balance sheets are secured by way of pari passu charge on the present and future current assets of the companies.”

The Court again noted the statement of Dr. A.M. Singhvi and Mr. Rajiv Nayar to the following effect: -

“12. Both Dr. Singhvi and Mr. Nayar state that if any change is proposed in the status of any of the unencumbered assets whose details are to be furnished as directed hereinbefore, the Respondents will first apply to the Court.”

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This was the **third assurance** on behalf of the respondents.

The fourth assurance

8. OIL and RHC filed the certificates disclosing the value of the unencumbered assets and investments. On 28.02.2017 OIL had unencumbered assets of a book value of 1953.70 crores and fair value of 1204.78 crores. The fair value of the unencumbered investments of OIL in listed entities including related/group entities was valued at 854.64 crores. As far as RHC is concerned, the book value of the unencumbered assets was shown as 6,346.69 crores and the fair value thereof at 3579.26 crores. The fair value of unencumbered investments was shown as 3246.76 crores. Therefore, it was projected by the respondents that these two companies had a net value which was much more than the amount claimed by the petitioner.

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9. As pointed out earlier FHL is a Public Limited Company in which OIL and RHC held majority shares amounting to 52.20% through their wholly owned subsidiary, Fortis Healthcare Holdings Private Limited (FHHPL) up till March, 2017. On 25.05.2017, FHL issued notice to its shareholders proposing that the shareholding of foreign investors would be increased. Immediately, thereafter, the petitioner filed I.A. No. 7142 of 2017 before the High Court of Delhi praying that OIL and RHC be restrained from reducing their 100% shareholding in FHHPL and be restrained from indirectly transferring FHHPL shares in FHL. It was prayed that these two companies be directed to maintain their holding of 52% in FHHPL. In the meantime, the disclosures made by FHL to the Bombay Stock Exchange (BSE) showed that the shareholding of FHHPL in FHL had fallen to 45.7%.

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10. On 19.06.2017 the High Court of Delhi recorded in its order that the learned senior counsel appearing for both OIL and RHC

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- A submitted that they are not seeking to change the status of any unencumbered assets as disclosed to the Court and the shareholding as disclosed in terms of the order dated 06.03.2017 shall not be affected. The statement was taken on record by the High Court and the application disposed of in terms of this statement. This effectively meant that the Court had restrained OIL and RHC from reducing their shareholding in FHL through FHHPL in any manner. Relevant portion of the order passed by the High Court of Delhi dated 19.06.2017 reads as follows: -
- “5. Learned Senior Counsel for respondent no.14 and 19 submits that they are not seeking to change the status of any unencumbered asset as disclosed to the court and by mere passing of the impugned resolution, the shareholding as disclosed, in terms of order dated 06.03.2017, shall not be affected.
6. The statement is taken on record.
- D 7. In view of the above statement, the application is disposed of.”
- This was the **fourth assurance** given by the respondents.”
- E 4. While dealing with said Special Leave Petition (Civil) No.20417 of 2017, the proceedings arising from the order dated 21.06.2017 and the orders passed by this Court were noted by this Court in the Judgment as under:
- “Proceedings before this Court”**
- F 13. The order dated 21.6.2017 of the Delhi High Court was challenged by the petitioner before this Court and the main contention of the petitioner was that despite the respondents violating the undertakings time and again restraint orders were not being passed. In the Special Leave Petition (Civil) No.20417 of 2017 filed by the petitioner this Court passed the following order on 11.08.2017: -
- G “In the interim it is directed that status quo as on today with regard to the shareholding of Fortis Healthcare Holding Private Limited in Fortis Healthcare Limited shall be maintained.”
- H As per the statutory disclosures made by FHHPL to the BSE and National Stock Exchange (NSE), it was disclosed that

on 14.08.2017, 30,59,260 shares of FHHPL in FHL were pledged A
in favour of Indiabulls Housing Finance Limited (IHFL).

14. The petitioner filed a contempt petition being Diary No.27334 of 2017 alleging that the conduct of the respondents in creating a 13 pledge on 14.08.2017 is violative of the order dated 11.08.2017 In the meantime on 21.08.2017, OIL filed an application being I.A. 77497 of 2017 for directions permitting sale of encumbered shares to pay its debts and also prayed that a clarification be issued that the order dated 11.08.2017 is limited to shares other than to those pledged to banks and financial institutions. In I.A. 77497 of 2017, OIL had stated as follows: - B

“24. It is in these circumstances that the Respondent Company seeks a direction from this Hon’ble Court that the order dated 11 August 2017 passed by this Hon’ble Court is limited to shares other than those pledged to the banks and the financial institutions, the sale of which is being made after obtaining prior consent of the pledgee(s). C

25. It is submitted that the said direction will not, in any event, have an impact on the potential creditors and that the availability of these funds will only help pare down the debt. This will only raise the value of the shares held by Respondents.” D

Similar application being I.A. No.76959 of 2017 with identical paragraphs 24 and 25 was filed by RHC. E

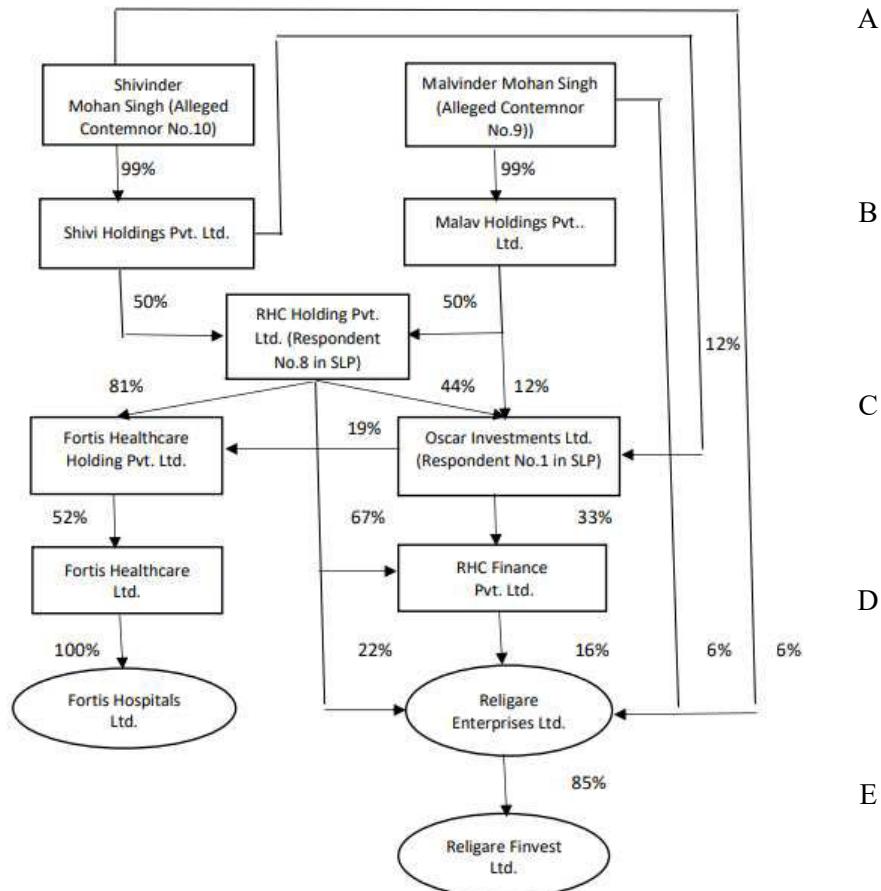
15. On 31.08.2017, this Court directed as follows:-

“As the present Special Leave Petition is due to come up for a fuller consideration on 23rd October, 2017, we do not consider it necessary to delve into the issues raised at this stage as the time taken to answer the same would be the same as would be required to hear and decide the matter finally. We, therefore, decline to pass any order in the matter, save and except, to put on record that the interim order of this Court dated 11th August, 2017 was intended to be in respect of both the encumbered and unencumbered shares of Fortis Healthcare Limited held by Fortis Healthcare Holding Private Limited. Consequently, there will be no transfer of the shares to the extent indicated above. F

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- A Parties may complete the pleadings in the meantime.
As we have now clarified the previous order of this Court dated 11th August, 2017 no case for contempt is made out. However, it is needless to say that the present order and the above clarification would govern the rights of the parties henceforth. The contempt petition is accordingly disposed of.”
- B **16.** On this date, the contempt petition was disposed of and at the same time it was mentioned that the order and the clarification contained therein would govern the rights of the parties henceforth. The order dated 11.08.2017 and 31.08.2017 were later clarified by this Court vide order dated 15.02.2018 which reads as follows:-
- “Having heard the learned counsels for the parties, we clarify our interim orders dated 11th August, 2017 and 31st August, 2017 to mean that the status quo granted shall not apply to shares of Fortis Healthcare Limited held by Fortis Healthcare Holding Pvt. Ltd. as may have been encumbered on or before the interim orders of this Court dated 11th August, 2017 and 31st August, 2017.
- C The applications for directions are disposed of in the above terms.”
- D It would be pertinent to mention that on 23.02.2018, this Court passed the following order:
- “Interim order of this Court dated 15th February, 2018 will continue to hold the field till the High Court decides the matter.”
- E **17.** During the period 06.09.2018 to 18.09.2018 Indiabulls Ventures Limited (IVL), with which FHHPL maintains a demat account transferred 12,25,000 shares of FHL held by FHHPL to IHFL. In the present contempt petition filed in October, 2018, it is alleged that this transfer of shares was in contempt of the orders dated 11.08.2017, 31.08.2017, 15.02.2018 and 23.02.2018.”
- F G 5. As stated in Paragraph 17 quoted hereinabove, Contempt Petition (C) No.2120 of 2018 was filed in this Court alleging that transfer of shares were effected in violation of the orders dated 11.08.2017, 31.08.2017, 15.02.2018 and 23.02.2018 passed by this Court. While dealing with the matters in issue including the question whether 12,25,000 shares were pledged prior to 11.08.2017 or not, this Court had set out a chart in paragraph 3 of the Judgment as under:



6. The issues whether there was contempt of the orders passed by this Court and whether pledge of 12,25,000 shares was prior to 11.08.2017 or not were considered by this Court as under:

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“21. The main issue is whether these 12,25,000 shares were pledged prior to 11.08.2017 or not. At this stage it would be pertinent to mention that the stand of IHFL that no pledge was created after 11.08.2017 is incorrect. The disclosure made on 21.08.2017 by FHHPL to BSE and NSE clearly discloses that 30,59,260 shares of FHL held by FHHPL were pledged on 14.08.2017 in favour of IHFL. This disclosure of 21.08.2017 is a part of the record and not specifically denied by IHFL.

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22. We may point out that till October 2017, IHFL was not represented in this Court. However, on 16.08.2017 and 31.08.2017

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- A through emails RHC informed IHFL about the status quo order passed by this Court. Thus, IHFL cannot claim that they were not aware of this Court's orders. However, from the material on record especially the replies filed by OIL, RHC, MMS and SMS it is apparent that on 06.09.2018, 07.09.2018, 08.09.2018 IHFL transferred 6,00,000 shares of FHL held by FHHPL. When RHC came to know about these transfers, it immediately informed IHFL that transfers were in violation of the orders passed by this Court on 11.09.2017. Despite the communication dated 11.09.2018, IHFL continued to transfer shares of FHL held by FHHPL on 11.09.2018, 12.09.2018, 14.09.2018, 17.09.2018 and 18.09.2018. On 24.09.2018, this Court was informed that IHFL had transferred 12,25,000 shares held by FHHPL in FHL in violation of the Court's orders. As on 29.09.2018, another transaction of 9,04,760 shares had taken place. The main issue is whether 12,25,000 shares were encumbered or not.
- D **23.** FHL is a public company and being a listed company, it has to disclose its shareholding patterns to the stock exchange. A chart showing share holding pattern of FHHPL in FHL will show the position of holdings at various stages:

E	S. No.	Quarter Ending	Total Shares	Encumbered Shares	Unencumbered shareholding of FHHPL in FHL
	1	September 2016	32,50,91,529	27,21,59,955	5,29,31,574
	2	December 2016	32,50,91,529	25,22,63,248	7,28,28,281
F	3	28th Jan 2017	32,50,91,529	25,19,23,248	7,31,68,281
	4	March 2017	27,02,41,529	23,18,01,440	3,84,40,089
	5	June 2017	22,22,11,701	18,38,96,484	3,83,15,217
G	6	September 2017	17,80,26,597	17,53,94,820	26,31,777
	7	December 2017	17,80,26,597	17,53,94,820	26,31,777
	8	March 2018	34,20,451	6,89,084	27,31,367
	9	June 2018	32,82,851	5,51,484	27,31,367
H	10	September 2018	11,53,091	5,51,484	6,01,607
	11	December 2018	11,53,091	5,51,484	6,01,607

It is true that we have to decide whether there is any disobedience of the orders of this Court, but while doing so we will make reference to the proceedings before the Delhi High Court and the above chart to show how both sets of respondents have violated the orders of the courts. As pointed above, on 19.06.2017 learned counsel for OIL and RHC had made a statement before the Delhi High Court that the status of unencumbered assets as disclosed to the court would not be changed and the shareholding as disclosed in terms of order dated 06.03.2017 shall not be affected. When the petitioner felt that this order is not being complied with, it filed contempt petition in the Delhi High Court. Within two days another order was passed by the Delhi High Court on the basis of the undertaking given to it.

24. The above chart would show that in the quarter ending June 2017, the total shares held by FHHPL in FHL were 22,22,11,701 and the encumbered shares were 18,38,96,484. Only 3,83,15,217, were unencumbered.

25. This Court on 11.08.2017 directed that status quo with regard to shareholding of FHHPL in FHL be maintained. On 31.08.2017 it was clarified that the order would apply to both encumbered and unencumbered shares. On 14.08.2017, 30,59,260, unencumbered shares were pledged in favour of IHFL. As far as this violation of the order dated 11.08.2017 is concerned, in view of the order dated 31.08.2017, the same stands condoned. This would further mean that the unencumbered shares should have been reduced to 3,52,55,957.

26. However, the figures of September 2017 show a totally different situation. The total shareholding has fallen to 17,80,26,597 and the unencumbered shares to 26,31,777. This means that in addition to 30,59,260 shares pledged on 14.08.2017, 3,26,24,180 number of shares were encumbered or transferred during this period. There is no explanation by OIL, RHC, MMS or SMS, as to how these unencumbered shares were encumbered or transferred in total violation of the orders of the courts.

27. We shall now deal with the issue as to whether IHFL and IVL had violated the orders of this Court or not? To decide this issue, it would be appropriate to determine whether IHFL

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- A transferred any shares which were not encumbered up to 14.08.2017.
- 28.** This brings us to the shareholding pattern of FHL for the period between 01.07.2018 and 30.09.2018 because it is during this period that IHFL transferred the shares. According to IHFL these 12,25,000 shares stood pledged with them. Neither in I.A. No.109493 of 2017 nor in the reply filed by contemnor nos. 1-8, is there any clear-cut statement as to how and when the different pledges were created. Reference has been made to loan documents of 2016 and also to the pledge of 14.08.2017. According to alleged contemnor nos. 1 to 8, FHL was maintaining a demat account with IVL. The case set up is that when the value of the shares of IHFL fell in the market, to make the security equal to the outstanding due to IHFL, further shares were transferred by IVL to IHFL. It is urged that this was done in view of the instructions given prior to 11.08.2017 by FHHPL to IVL and IHFL. These transfers were done on the basis of the delivery instructions slips executed by IHFL as power of attorney holder of FHHPL. Even if this be true, the alleged contemnors are guilty of violating the orders of this Court. The order dated 11.08.2017 clearly debars FHHPL from changing its shareholding in IHFL. Vide order dated 31.08.2017, it was clarified that the order dated 11.08.2017 would apply both to encumbered and unencumbered shares. It was only on 15.02.2018 that the order was clarified that it would not apply to shares encumbered prior to 11.08.2017 and 31.08.2017. A reading of the 3 orders makes it clear that no unencumbered shares could be charged after 31.08.2017 at least. Even if FHHPL had given power of attorney empowering IVL to transfer shares from its demat account to top up the security value, that power of attorney could not be used to violate the orders of this Court. What FHHPL could not do, could obviously not be done by its agent or attorney. The shares which were used to top up the security after 31.08.2017 were obviously unencumbered shares prior to this date. The plea is clearly unacceptable and a lame excuse for the wilful disobedience of the order directing maintenance of *status quo* which, as modified, was to apply to the unencumbered shares. The respondents were aware and cannot claim ignorance of the purported agreements under which they were required to top-up upon the securities, in case of fall of

market value of the shares. In other words, the interim order passed by this Court was to apply even if there was a fall in market value of the securities held by the creditors.

29. To make this position clear, we may refer to the disclosures made by FHL to BSE. The above chart shows that in the quarter ending 30.06.2018, FHHPL held 32,82,851 shares in FHL out of which only 5,51,484 were encumbered, meaning that the balance 27,31,367 were unencumbered shares. The disclosure of 30.09.2018 and 31.12.2018 both reflect that the number of encumbered shares have not changed but the total shareholding of FHHPL in FHL has reduced from 32,82,851 to 11,53,091. This means that what was transferred were 21,29,760 unencumbered shares and not encumbered shares. The transaction of 12,25,000 shares therefore is out of the unencumbered shares because after 31.03.2018, the encumbered shares were much below 12,25,000.

30. We are not entering into the dispute whether the shares were transferred on the basis of pre-signed slips or delivery instruction slips based on the power of attorney but the fact remains that the official record shows that these shares were not encumbered and the contemnors have failed to place any cogent material on record to show that these 12,25,000 shares were pledged on or before 31.08.2017.

31. IHFL, in fact, flagrantly violated this Court's orders and made various transactions transferring even unencumbered shares. The best course available to IHFL would have been to approach this Court seeking a clarification before it made the transfers. This they did not do. We are, therefore, clearly of the view that IHFL and IVL and their officials i.e. contemnor nos. 1 to 8 knowing fully well that this Court had passed an order directing status quo to be maintained with regard to the holding of FHHPL in FHL, violated the order. There can be no manner of doubt that IHFL and IVL have violated these orders and, therefore, we find contemnor nos. 1-8 who are active directors of IHFL and IVL guilty of knowingly and wilfully disobeying the orders of this Court and find them guilty of committing Contempt of Court. We will hear them on the question of sentence."

7. This Court thereafter considered the role of contemnor Nos. 9 and 10, namely, Malvinder Mohan Singh (MMS) and Shivinder Mohan Singh (SMS) respectively as follows:

- A “**34.** We have given detailed facts of the shareholding of FHHPL in FHL during the period of quarter ending September 2016 to December 2018 hereinabove. As far as these contemnors are concerned, the first assurance given by them to the High Court of Delhi was on 24.05.2016 when they assured the High Court of Delhi that any dealings made by them would not affect the rights of the petitioners. As on 30.09.2016, FHHPL held 32,50,91,529 shares in FHL out of which 27,21,59,955 shares were encumbered shares and 5,29,31,574 shares were unencumbered shares. For various reasons, the total number of shares fell to 22,22,11,701 in quarter ending June 2017 and the number of encumbered shares became 18,38,96,484 and the unencumbered shares dropped by about 1.5 crore shares to 3,83,15,217. Even after giving an assurance on 21.06.2017 to the High Court of Delhi, unencumbered shares were encumbered or transferred as is apparent from the above table.
- B **35.** The petitioner came to this Court when the order dated 11.08.2017 was passed and clarified by order dated 31.08.2017. During this period also the total shareholding of FHHPL in FHL fell from 22,22,11,701 to 17,80,26,597 by 4,41,85,104 shares. MMS and SMS have not furnished any explanation as to how this happened. The contemnors were the best persons to disclose how this happened. They have not done so. The only explanation we have before us is about the pledge of 30,59,260 shares on 14.08.2017. It is difficult to ignore this huge drop in shareholding but even if we were to ignore this, we do not understand how in March 2018, the shareholding fell to 34,20,451 and finally in December 2018 to 11,53,091. The undertaking given to the High Court of Delhi was that the shareholding as on 19.06.2017 and 21.06.2017 would be maintained. On 11.08.2017, this Court injunction the respondents from changing the shareholding. On 11.08.2017, this Court passed the order of status quo referred to above. Despite that specific order, on 14.08.2017 a pledge was created. This was a violation of the orders of this Court. RHC and OIL filed applications before this Court on 21.08.2017 praying for modification of the order and for a direction that the order dated 11.08.2017 may be limited to the shares other than those which already stood pledged to banks and financial institutions. Though separate applications have been filed, Paragraph 25 of both the applications are identical and has been quoted hereinabove.

36. These applications were filed on affidavit and it has held out to this Court that if the order dated 11.08.2017 is limited to unencumbered shares it would have no impact on the availability of funds to protect the interest of the petitioner. On the basis of this statement, the order dated 31.08.2017 was passed and this Court took a lenient view on the matter and disposed of the contempt without taking any action. A

37. Unfortunately, the actions of these contemnors clearly show that these statements were made without the least intention of complying with them. These contemnors had already prepared a well thought out scheme of diluting their shareholdings directly or indirectly in FHL to defeat the rights of the petitioner. B

38. The explanations provided are not worth consideration. According to SMS he was not even taking part in the administration of these companies and had gone into religious service. This is belied from the fact that he has been attending most of the meetings of the Board of Directors. The next defence taken by both the contemnors is that they lost control over the companies because the encumbered shares were sold. As pointed out above it is not only the encumbered shares but also the unencumbered shares which have been transferred. In December 2017, the unencumbered shares of FHHPL in FHL were 26,31,777 and in December, 2018 there were only 6,01,607 unencumbered shares. This shows beyond any manner of doubt that there has been wilful violation of the orders of this Court. It is apparent that the contemnors knowingly and willingly lost control of FHL. C

39. A litigant should always be truthful and honest in court. One who seeks equity must not hide any relevant material. In the present case, the petitioner has violated the undertakings given to the Delhi High Court as also the orders of this Court. The Delhi High Court will deal with the issue in so far as the undertakings made before it are concerned. We have no doubt in our mind that contemnor nos.9 and 10 have also wilfully and contumaciously disobeyed the orders of this Court. What has happened during the period when this matter has been pending in this Court is that the shareholdings of FHHPL, which is wholly owned by OIL and RHC which in turn are controlled by SMS and MMS, have virtually vanished in FHL. FHHPL owns no shares in FHL now. It may be true that D

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- A IHH Healthcare Bhd. (Malaysian Company) through its actually owned subsidiary Northern TK Venture Pte Ltd. is now the majority stake holder but that is due to allotment of preferential shares. In addition to the preferential shares allotted to them, the shares which were owned by MMS and SMS through their holdings in FHHPL in FHL have vanished into thin air and the only conclusion which we can draw is that this was a well thought out plan to deprive the petitioner from the amounts due to it.
- B **40.** No person or institution howsoever powerful, can be permitted to misuse the process of the Court. Contempt of court can be committed in various ways. Civil contempt is defined under the Contempt of Courts Act, 1971 under Section 2(b) to mean wilful disobedience of any judgment, decree, direction, order of the Court of wilful breach of an undertaking given to the Court. Criminal contempt has been defined under Section 2(c) to include anything which scandalizes or tends to scandalize or lower or tends to lower the authority of the Court. Criminal contempt also means any act which prejudices or interferes or tends to interfere with the due course of judicial proceedings. As far as the present case is concerned, the conduct of contemnor nos.9 and 10 definitely undermines the authority of the Court. We are dealing with an international arbitration which has fructified into an award but by misusing the legal process contemnor nos.9 and 10 have successfully avoided paying off the petitioner. In our view, action for committing criminal contempt could have been taken against contemnor nos. 9 and 10, but by taking a lenient view of the matter we are only treating it as a civil contempt.
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- F **41.** The order passed by this Court on 11.08.2017 with a clarification on 31.08.2017, and modification made on 15.02.2018, is not to be read in isolation but along with the solemn undertakings and assurances given by the contemnors on as many as five occasions before the Delhi High Court, the last one being as late as on 21.06.2017. These assurances were to the effect that even if the Court permits sale of encumbered shares for payment of debt, it would not have any impact on the (potential) creditors and availability of the funds would only pare down the debt and increase the value of the shares. Contrary to the aforesaid solemn assurances and undertakings, which were repeatedly reiterated
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to procure orders, the shareholding went into a downward spiral, as is apparent from the table in paragraph 23. There was a significant decline in the total number of shares held by FHHPL, both encumbered and unencumbered, which fell down from 27,21,59,955 and 5,29,31,574 in September 2016 to 5,51,484 and 6,01,607 in December 2018. The aforesaid fact with the impact on valuation was never brought to the notice of the Court and was concealed with the knowledge that these facts, if brought to the notice, would have substantial bearing on the orders that would be passed to protect the interest of the petitioner.

42. What is even more shocking and clearly contemptuous is the manner in which, in a well thought off plan, the authorized capital of FHL was increased with the objective and purpose to transfer controlling interest in the company. Consequently, the controlling interest of MMS and SMS came down in FHL, as the company changed hands. Controlling interest held by the majority shareholders has considerable market value. Further, the amount brought in by a foreign shareholder, who now has the controlling interest in FHL, has been transferred in a dubious and clandestine manner without full facts being brought on record. This amount is not available for payment and satisfaction of the Award. About Rs.4,600 crores has been transferred in a very hurried and clandestine manner to a trust registered in Singapore i.e. RHT Health Trust (RHT). Coincidentally, respondents no.9 and 10 themselves or through their holding companies were at one time the biggest unitholders in the trust. It is obvious that the respondents being debtors are maneuvering, transferring and converting the assets of value, with the desire and intent that the petitioners would not be able to recover the decretal amount as per the award.

43. We would, therefore, not read the orders of this Court in isolation but along with the five solemn assurances and undertakings given before the High Court. Directions given by this Court and the orders passed were in light of the fact that the contemnors always projected that the said assurances and undertakings were binding and adhered.

44. There can be no manner of doubt that contemnors 9 and 10 have changed the shareholding of FHHPL in FHL knowingly and wilfully. They have done this with a view to defeat the rights of

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- A the petitioner. They have also wilfully and contumaciously violated the orders of this Court dated 11.08.2017, 31.08.2017 and 15.02.2018. They are accordingly held guilty of committing contempt of court. We shall hear them on the question of sentence. We give one chance to the contemnors no.9 and 10 to purge themselves of the contempt.
- B **45.** On 21.06.2017, a statement was made on behalf of contemnor nos. 9 and 10 before the High Court of Delhi that in respect of any transaction that these respondents may enter into, a sum of Rs.2341.90 crores i.e. Rs.452.60 crores of OIL and Rs.1889.30 crores of RHC would always be made available and realizable from the assets of the company. We, therefore, direct that in case each of the respondents deposits a sum of Rs.1170.95 crores i.e. 50% of Rs.2341.90 crores in this Court within eight weeks from today then we may consider dealing with them in a lenient manner.
- Violation of order dated 14.12.2018**
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- D **46.** It was also argued that contemnor nos.9 and 10 have also violated the order dated 14.12.2018. Since this is not the subject matter of the main contempt petition and no notice has been issued to the concerned parties in this regard, we feel that this issue has to be segregated from the rest of the contempt petitions because the main pleadings and replies are in respect of the alleged contempt of orders dated 11.08.2017, 31.08.2017, 15.02.2018 and 23.02.2018.
- E **47.** However, we cannot let the matters stand as they are. On 14.12.2018, this Court had passed the following order:
- F “Issue notice. The personal presence of the alleged respondentscontemnors is dispensed with for the present. Status quo with regard to sale of the controlling stake in Fortis Healthcare to Malaysian IHH Healthcare Berhad be maintained.”
- G The order directs that the status quo with respect to the sale of controlling stake in FHL to IHH Healthcare Bhd. (Malaysian Company) should be maintained. We are now told that this sale had already taken place. This matter needs to be enquired into and we have to be certain when this sale actually
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took place and when was the controlling stake in FHL transferred to the IHH Healthcare Bhd. (Malaysian Company). Furthermore, on 09.01.2019, FHL moved an application in this Court and stated that the transaction between the FHL and IHH Healthcare Bhd. (Malaysian Company) had been completed on 13.11.2018 and prayed that the order dated 14.12.2018 be modified insofar as it pertains to sale of controlling stake in IHH Healthcare Bhd. (Malaysian Company).

48. I.A. No.8948 of 2019 was filed by the petitioner on 15.01.2019 stating that FHL is proposing to transfer Rs.4,000/- crores approximately, received by it [as a result of the transferring of shares to the IHH Healthcare Bhd. (Malaysian Company)] to RHT Health Trust, Singapore (RHT). Petitioner prayed for restraining this transfer of funds and compliance of order dated 14.12.2018. FHL filed a reply to this I.A., which made it apparent that on 15.01.2019 itself FHL had completed the transaction involving acquisition of assets from Singapore based RHT even though it was fully aware that this Court was seized of the matter.

49. Interestingly, the main promoters of RHC and OIL i.e. MMS and SMS were the biggest unit holders in RHT when it was initially incorporated. The statistics of unit holding as on 20.06.2017 of RHT Trust, Singapore shows that SMS, MMS, their family members, FHHPL, FHL and RHC virtually owned the RHT trust. That situation has now changed and now the situation is such that the companies/associations of which MMS and SMS are partners are no longer visibly present and there are other persons who are there. When and how the holdings in RHT trust were transferred by various people is a matter which is required to be gone into.”

8. Having found the contemnor Nos.9 and 10 and the entities RHC, OIL and FHL guilty of violating the assurances given to the Court, this Court directed in the Judgment as under:

“51. In view of the above discussion, we, dispose of this contempt petition in the following terms: -

(i) We find Sameer Gehlaut, Director of Indiabulls Housing Finance Limited and Director of Indiabulls Ventures Limited (Contemnor Nos.1 & 5), Gagan Banga, Director of Indiabulls

- A Housing Finance Limited and Director of Indiabulls Ventures Limited (Contemnor Nos.2 & 6), Ashwini Kumar Hooda, Director of Indiabulls Housing Finance Limited (Contemnor No.3), Sachin Chaudhary, Director of Indiabulls Housing Finance Limited (Contemnor No.4), Divyesh Bharat Kumar Shah, Director of Indiabulls Ventures Limited (Contemnor No.7) and Pinank Jayant Shah, Director of Indiabulls Ventures Limited (Contemnor No.8), who are active directors of IHFL and IVL of knowingly and wilfully disobeying the orders of this Court dated 11.08.2017, 31.08.2017 and 15.02.2018 as continued on 23.02.2018 and find them guilty of committing contempt of this Court. We will hear them on the question of sentence. We afford an opportunity to contemnor nos.1-8 to purge themselves of the contempt by depositing the value of 12,25,000 shares as on 31.08.2017 in the Bombay Stock Exchange within eight weeks from today. In case, the said respondents purge themselves of the contempt, we may take a lenient view while imposing sentence.
- (ii) Malvinder Mohan Singh, Director of Oscar Investments Limited and Director of RHC Holding Private Limited (Contemnor Nos.9 and 12) and Shivinder Mohan Singh, Director of Oscar Investments Limited and Director of RHC Holding Private Limited (Contemnor Nos.10 and 13) have knowingly and wilfully violated the orders of this Court dated 11.08.2017, 31.08.2017 and 15.02.2018 as continued on 23.02.2018. Therefore, we hold both of them guilty of committing Contempt of this Court. We give one chance to them to purge themselves of the contempt. We, direct that in case each of the contemnors deposits a sum of Rs.1170.95 crores in this Court within eight weeks from today then we may consider dealing with them in a lenient manner, while imposing sentence.
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- (iii) In case any of the contemnors deposits the amount as directed hereinabove, this Court shall decide on the next date as to how this amount is to be disbursed.
- (iv) The Registry is directed to register a suo motu contempt petition against RHC Holding Private Limited, Oscar Investments Limited, Malvinder Mohan Singh, Shivinder Mohan

Singh and Fortis Healthcare Limited, for having wilfully violated the order of this Court dated 14.12.2018 and issue notice to them returnable for 03.02.2020 asking them to show cause why they should not be punished for contempt. A

52. List the present contempt petition on 03.02.2020 when all the contemnors named hereinabove shall remain present in the Court. On that day, we shall hear them on the issue of sentence. Along with this, the contempt petition which has been ordered to be registered shall also be listed on 03.02.2020.” B

9. In terms of leave granted in sub paragraph (i) of paragraph 51 quoted above, the amount of Rs.17,93,40,000/- having been deposited by Contemnor Nos.1 to 8, it was held by this Court in its order dated 18.12.2019that said Contemnors had purged themselves of the contempt and the matter was therefore closed as against them. C

10. The Special Leave Petition and the Contempt Petition along with Suo Motu Contempt Petition No.4 of 2019, registered pursuant to direction (iv) in paragraph 51 as quoted above, were then taken up for hearing. D

By order dated 11.2.2021, this Court issued notice to 17 Banks/ Financial institutions with whom certain financial transactions were entered into by the Contemnors and companies under their control; and some of the shares were pledged to them, so that the version of said Banks/ Financial institutions could be taken into account. E

11. The Order dated 18.02.2021 passed by this Court noted the submissions advanced on behalf of the Contemnors, Noticees and Daiichi, whereafter certain directions were passed by this Court as under: - F

“7. Mr. Kailash Vasdev, learned Senior Advocate, appearing for one of the contemnors had invited our attention to the affidavit filed on behalf of Respondent No. 14 in compliance of order dated 14.05.2018 (Volume 55). The tabular chart given in paragraph 7 of said affidavit and assertions in paragraph 8 thereof were to the following effect: G

“7. The details of the number of shares held by FHHL in FHL are as follows:

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	Date	Encumbered Shares	Unencumbered Shares	Total Number of shares
A	28.02.2017	26,81,66,020	3,84,25,509	30,65,91,529 (59.23%)
B	31.03.2017	23,18,01,440	3,84,40,089	27,02,41,529
	31.07.2017	18,64,94,060	84,89,948	19,49,84,008
	31.08.2017	17,53,94,820	26,31,777	17,80,26,597
C	31.01.2018	17,53,83,820 (pursuant to a release of 11,500 pledged shares)	26,43,277	17,80,26,597
D	28.02.2018	7,65,584	26,54,867	34,20,451
	31.03.2018	6,89,084	27,31,367	34,20,451
	16.05.2018	6,31,484	27,31,367	33,62,851 (0.65%)
E	8. Neither Respondent no.14 nor Respondent No.19 sold and/or further encumbered any shares after 06.03.2017. However, pursuant to the existing loan/pledge agreements, various banks themselves exercised the right of pledge/top-up of the pledge shares without any reference or any action from Respondent Nos.14 & 19 and/or FHHL, described in greater detail hereinbelow. Further, the Hon'ble Supreme Court, vide its orders dated 11.08.2017 and 31.08.2017 injunctioned FHHL and all financial institutions from selling/alienating encumbered as well as unencumbered shares held by FHHL in FHL. This order was modified by the Hon'ble Supreme Court on 15.02.2018, whereby the encumbered shares were permitted to be sold by the respective lenders. Due to all above, there were sale/fresh encumbrances from the period 06.03.2017 till 31.08.2017 but thereafter till 15.02.2018 there was no change in the said encumbrance/sale and once again there were further sales after 15.02.2018. The unencumbered shares held by FHHL in			
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FHL are protected by the order dated 23.02.2018 passed by the Hon'ble Supreme and cannot be encumbered/alienated by FHHL. Copies of the orders dated 11.08.2017, 31.08.2017, 15.02.2018 and 23.02.2018 passed by the Hon'ble Supreme Court are annexed herewith and marked as Annexure A (colly)."

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8. This reply, thus, clearly shows that though allegedly neither Respondent No. 14 nor Respondent No. 19 sold or further encumbered any shares after 06.03.2017, various banks/financial institutions themselves exercised the right of pledge/top-up of pledged shares without any reference to or action from either Respondent No. 14 or Respondent No. 19.

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9. In the circumstances, notices were issued to various banks/financial institutions as detailed in the order dated 11.02.2021.

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10. Appearing for some of the banks/financial institutions, Mr. Shyam Divan and Mr. Ramji Srinivasan, learned Senior Advocates; and Mr. Jayant Mehta, Mr. Sanjay Gupta and Mr. Sharma, learned Advocates, submitted inter alia that the issue was already gone into by this Court and that there were no pleadings to which any response could be filed by the concerned banks/financial institutions.

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11. In reply, Mr. Rakesh Dwivedi, learned Senior Advocate invited our attention to the chart set out in paragraph 23 of the Order, to submit that first three entries of the chart disclose that the total number of shares remained constant at 32,50,91,529; and that after the assurance was given on 23.01.2017 by the concerned respondents before the High Court of Delhi (marked as second assurance in paragraph 5 of the Order), not only the total number of shares started dwindling but the number of unencumbered shares went down from 7,31,68,281 to 6,01,607, as stated in the chart. Mr. Dwivedi, then, referred to the affidavit dated 08.02.2017 filed on behalf of all the respondents in the High Court of Delhi which held out that the value of unencumbered shares was more than Rs.4,000/- crores and that the value of the unencumbered security was sufficient in the event the award was to be enforced. The relevant paragraphs of said affidavit were as under: -

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- A “2. That vide order dated 23.1.2017, this Hon’ble Court had directed an affidavit to be filed by anyone of the Respondents on behalf of all the Respondents in respect of the unencumbered assets held by the Respondents in support of the assurance given to the Court as recorded in the letter dated 24.5.2016.
- B 3. Therefore, in furtherance of the Order dated 23.1.2017, I am filing the present affidavit on behalf of Respondent No. 19 and all other Respondents.
- C 4. All the Respondents had submitted their respective affidavits disclosing their assets on 6.12.2016 to this Hon’ble Court. The aggregate book value of investments held by all the Respondents (excluding investments inter se amongst the Respondents) as per the said Affidavits is Rs.10,217.10 Crores out of which investments to the tune of Rs.1,409.93 crores are encumbered leaving the residual investments to the tune of Rs.8,807.18 Crore as unencumbered. Further, as on 31.12.2016, the book value of investments held only by RHC Holding Private Limited (Respondent No.19) as on 31.12.2016 is Rs.6,510.54 Crores out of which investments to the tune of Rs.1,513.86 Crores are encumbered leaving the residual investments to the tune of Rs.4,996.68 Crores as unencumbered.
- E 5. Respondent No.19 has also undertaken an internal valuation of its unencumbered investments as on 31.12.2016 mentioned in para (4) above and based on such internal valuations, the estimated (on a conservative basis] fair value of its unencumbered investments as on 31.12.2016 is approximately Rs.3,453 Crores.
- F 6. Apart from the aforesaid investments, Respondent No.19 has also extended loans and advances (other than loans and advances to other Respondent entities) and after netting off the loans raised on current assets, the amount of loans and advances recoverable is Rs.252.59 Crores as on 31.12.2016 which is over and above the aforesaid investments.
- G 7. There is no intention of selling any of the unencumbered investments by way of shares held by Respondent No.19. A proposal which is under discussion may involve the sale of
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29,00,000 equity shares of SRL Limited held by Respondent No.19 and 7.05,000 equity shares of SRL Limited held by Malav Holding Private Limited (Respondent No.15) to external investors in the near future. These shares of SRL Limited are encumbered and thus not included in the value of unencumbered assets mentioned at paras (4) & (5) above. Obviously this will have to be after obtaining the consents of the security holders. The proceeds of such sale will have to be utilized to pare down the debt – the net assets of the Respondents will thus remain unchanged. The shares being sold [36,00,000] which are below 5% of the share capital of SRL will be sold to an external investor. The further proposal under consideration is to merge SRL with another listed group company at a later point of time. Even if this does take place, this will have no implications on the next assets of the Respondents.

8. There are proposals to issue further capital in the downstream companies [below Respondent No.19]. The net result of issue of shares will be accretion in the value of the shares of the upstream company. The promoters would continue to remain the single largest shareholders in the companies where fresh capital is being issued to minority investors, and that will create value going forward. The induction of a Private Equity fund or some such investor – were it to take place – will improve the finances of the downstream companies and thus add to the fair value of the unencumbered and encumbered shares.

9. The value of the unencumbered assets declared is sufficient security for the Award in the event it is enforced. This fair value of the unencumbered assets as mentioned in para (5) does not include value of 5 crore equity shares of Fortis Healthcare Limited held by the underlying subsidiary of the Respondents which have been kept aside from the aforesaid valuation for the sake of flexibility and debt repayments of various group entities.”

12. It was, therefore, submitted that it was not just a case of creating encumbrance or pledge but, there were instances of sale of shares and the purpose was definitely to reduce the extent of

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- A control of FHHPL. He further submitted that at the stage when the applications for modification/clarification were preferred by the banks and financial institutions, on the basis of which the order dated 25.02.2018 was passed by this Court, none of the banks had told this Court what the consequences of said order would be; and that in a matter of a yearand-half, the shareholding of FHHPL stood reduced to negligible level.
- 13.** Mr. Arvind P. Datar, learned Senior Advocate, added that there would normally be a basic arrangement or loan agreement, in terms of which various kinds of securities including charge over properties, corporate and personal guarantees would be offered; and that a pledge of shares would only be by way of an additional security. None of the banks/financial institutions had indicated why the unencumbered shares were sought to be put under encumbrance or the shares were sold when other forms of securities were available. He further submitted that the arrangements under which the shares were pledged must be disclosed so that the purpose for which the basic accommodation or loan was obtained would also be clear. For example, according to him, in November, 2016 a loan agreement was entered into between India Bulls and RHC Holding Private Limited for an amount of Rs.350 crores purportedly for ‘construction/development of residential projects’. He submitted that no such project had come up and the amount of Rs.350/- crores through successive transactions, was siphoned away. What kind of due diligence was undertaken by the banks/financial institutions while extending the loan facility must therefore be brought on record.
- 14.** Both the learned Senior Counsel submitted that with various orders passed by the High Court and this Court, the concerned individuals and corporate entities could not sell the shares held by FHHPL directly and, therefore, a device was employed and the arrangement was so structured that the shares were proceeded against by the banks and financial institutions. It was submitted that the banks/financial institutions had intervened in the matters pending before this Court, that they were definitely aware of the Award granted in favour of M/s. Daichi Sankyo Company Limited; and that the role of banks and financial institutions would, therefore, require closer scrutiny.

15. In the premises, for the present, we direct all the noticee A banks and financial institutions: -

- “(a) to place on record the basic documents pertaining to loans advanced or financial accommodations extended in respect of which the shares of FHL were pledged with them; B
- (b) to place on record the nature of securities offered in connection with such loan arrangements; C
- (c) to place on record the details of the encumbered and unencumbered shares of FHL standing in the name of FHHPL, held by them in September, 2016; D
- (d) to place on record the details of encumbered and unencumbered shares of FHL standing in the name of FHHPL, held by them on 11.08.2017; E
- (e) to give details of shares of FHL standing in the name of FHHPL, which were put by them under encumbrance after 11.08.2017; F
- (f) to give details of shares of FHL standing in the name of FHHPL, sold by banks/financial institutions from January, 2017; G
- (g) to disclose whether such encumbrance created after 11.08.2017 was in pursuance of any fresh arrangement or agreement and, if so, the details of such agreement/ arrangement; H
- (h) to disclose whether under such agreement/arrangement any other security was given by the pledgors; and
- (i) to give the value of the encumbered shares as they stood in September, 2016, on 11.08.2017 and on subsequent dates.”

12. The subsequent Order dated 15.4.2021 passed by this Court noted submissions advanced on behalf of Noticee No.4 and passed directions as under:

“Mr. Sanjay Gupta, learned advocate appearing for M/s. RBL Bank Ltd.- Noticee No.4 submits: -

- A (a) As on 11.08.2017, 38.75 crores shares of Fortis Healthcare Ltd. stood pledged with the noticee in respect of facilities granted to M/s. Religare Wellness Ltd (now known as RWL Healthworld Ltd.) and to Religare Aviation Ltd. (now known as Ligare Aviation Ltd.)
- B (b) On 20.02.2018, 33.75 crores shares were sold for Rs. 47 crores while another tranche of 80,000 shares was sold on 24.05.2018 for about Rupees one crore.
- (c) Thus, 4.20 lakh shares are still under the control of Noticee No.4.
- C (d) All the facilities now stand squared up and the amounts advanced by the noticee have been recovered.

D It is also submitted that the pledgor never approached the notice for recovery of additional shares amounting to 4.20 lakhs shares, though all the arrangements had squared up.

In the circumstances, we direct the Noticee No.4 to hold on to these 4.20 lakhs shares till further orders.

..."

- E 13. All the concerned Contemnors as well as Noticees filed their responses enclosing relevant documents and materials. The concerned documents run into more than 200 volumes. The broad outline of submissions advanced on behalf of the Noticees is to the following effect that for various financial accommodations/ loans taken by the companies directly or indirectly under the control of Contemnor Nos.9 and 10, F shareholding of FHHPL in FHL was pledged as collateral security with authorisation in favour of the Noticees to sell those shares in open market to protect the interest of the Noticees if the value of the security was getting reduced or diminished. Various transactions have been referred to in the responses filed on behalf of the Noticees and relevant documents in support have been placed on record.

G 14. A comprehensive list of dates and events emerging from the documents so placed on record by the Noticees is tabulated hereunder. The abbreviations used in the list of dates are as under: -

- Axis Bank Limited (ABL)

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- Ambit Finvest Private Limited (Ambit) A
- Credit Suisse Finance (India) Pvt. Ltd. (CSFIPL)
- Dion Global Solutions Ltd. (DION)
- ECL Finance Ltd. (ECL)
- Finserve Shared Services Limited (FSSPL) B
- FHL (Fortis Healthcare Limited)
- FHHL (Fortis Healthcare Holding Limited)
- Fortis Healthcare Holding Private Limited (FHHPL) C
- Healthfore Technologies Ltd. (HTL)
- Indiabulls Housing Finance Limited (IHFL)
- Ligare Voyages Ltd. (LVL)
- Lakshmi Vilas Bank (LVB) D
- Oscar Investments Limited (OIL)
- RHC Holdings Private Limited (RHC)
- Religare Enterprises Limited (REL) E
- Religare Aviation Limited/Ligare Aviation Ltd. (RAL/LAL)
- Religare Finvest Limited (RFL)
- Religare Capital Markets International (Mauritius) Limited (RCMIML) F
- Religare Wellness Ltd./RWL Healthworld Ltd. (RWL)
- Rantakar Bank Limited (RBL)
- Yes Bank Limited (YBL)

The relevant dates regarding arbitral and execution proceedings as well as the undertakings given on behalf of the respondents are highlighted in the list of dates for easy reference. The list of dates and events is as under:

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	Date	Particulars	Pg.No.
A	2007-2014	FHL Shares pledged on various dates in favour of ABL to secure various credit facilities. Upon closure of these facilities, pledged shares were released.	Vol. 197, Pg.1
B	2009-2013	Loans extended by YBL to Group Companies owned and controlled by Singh Brothers since 2009. 3.3 Crores FHL Shares were pledged in favour of YBL in July 2010 to secure certain facilities. Pledged shares were released upon closure of these facilities.	Vol. 200, Pg.2
	08.11.2010	Overdraft Facility for Rs.50 Crores executed between RHC and ABL, security being "First Charge on the entire current assets of the company, both present and future"	Vol. 167, Pg.137
C	27.07.2012	Credit Facility for Rs.53 Crores (Rs.45 Crores + Rs.8 Crores) extended to RWL by RBL under the security of: A. "First pari passu charge on all current assets and movable fixed assets of the company, both present and future" and B. "unconditional and irrevocable corporate guarantee of RHC Holdings Private Limited and same to remain outstanding during currency of RBL Loan"	Vol. 178, Pg.30
D	12.11.2012	Initiation of Arbitration Proceedings by Daiichi in Singapore being Arbitration Case No. 19074/CYK	
E	29.11.2012	Credit Facility for Rs.75 Crores extended to RAL by RBL on following security: A. Subservient charge on all current assets and movable fixed assets of the company, both present and future B. Mortgage of land & building located at Gurgaon owned by Torus Buildcon Pvt. Ltd. providing minimum hard asset cover of 1.40 X based on latest market value of the land and building C. Unconditional and irrevocable corporate guarantee of M/s Torus Buildcon Pvt. Ltd. till the end of the tenor of the facility.	Vol. 178, Pg.18
F	03.08.2013 06.08.2013	Rs.100 Crores Loan extended by YBL to RAL against: A. First Pari Passu charge on Current Assets and Moveable Fixed Assets of the Borrower (both present and future). B. Exclusive Charge on conlrnercial land (admeasuring - 10.35 acre at Sector 62, Golf course extension, Gurgaon) road owned by RS Infrastructure Pvt Ltd. ensuring cover of 1.33x C. Unconditional and Irrevocable Corporate Guarantee of RS Infrastructure Private Limited to remain valid during the entire tenor of the facility. D. Non-Disposal Undertaking from Lowe Infra and Wellness Private Limited for their entire shareholding in RS Infrastructure Private Limited. E. Debt Service Reserve Account (DSRA) equivalent to three months interest payment shall be created upfront in the form of lien marked Fixed Deposit with YBL Rs.10 Crores remains outstanding from this borrower as on 23.03.2021.	Vol. 175, Pg.543, 592
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	Rs.200 Crores Loan extended by YBL to HTL against: A. First Pari Passu charge on Current Assets and Moveable Fixed Assets of the Borrower (both present and future). B. Exclusive Charge on commercial land (measuring - 10.35 acre at Sector 62, Golf course extension, Gurgaon) road in owned by RS Infrastructure Pvt Ltd. ensuring cover of 1.33x C. Unconditional and Irrevocable Corporate Guarantee of RS Infrastructure Private Limited to remain valid during the entire tenor of the facility. D. Non-Disposal Undertaking from Lowe Infra and Wellness Private Limited for their entire shareholding in RS Infrastructure Private Limited. E. Debt Service Reserve Account (DSRA) equivalent to three months interest payment shall be created upfront in the form of lien marked Fixed Deposit with YBL Facility closed on 16.10.2019 after recovery through sale of securities.	Vol. 556 175,Pg. 176, Pg.604	A B C
06.03.2014	Rs.130 Crores Loan extended by YBL to DION.	Vol. 175, Pg.503	D
12.03.2014	Rs.10 Crores remains outstanding from this borrower as on 23.03.2021.	Vol. 176, Pg. 618, 646	
27.03.2014	Facility Agreement for Term Loan of Rs.235 Crores to FSSPL by ABL (Agreement not put on record)	Vol. 197, Pg.1	
28.03.2014	1,80,00,000 FHL Shares pledged in favour of ABL to secure credit facility of Rs.235 Crores	Vol. 197, Pg.1	E
02.05.2014	1,55,00,000 FHL Shares pledged with YBL [w.r.t. DION 06.03.2014] Pledge over 50,000 FHL Shares released on 29.07.2015.	Vol. 173, Pg.147	
10.06.2014	Standby Letter of Credit of Rs.130 Crores extended by YBL to LVL. This facility was closed on 27.09.2016.	Vol. 200, Pg.3	F
27.06.2014	Facility Agreement for Term Loan of Rs.100 Crores executed between LAL and ABL against security of: A. Exclusive charge on the aircraft Falcon 2000 (Serial Number: IOI) B. Subservient charge on all current and movable fixed assets of the company, both present & future. C. Pledge of (in compliance with Sec 19 (2) of the Banking Regulation Act) equity shares of FHL and REL aggregating to Rs.32.50 Crores D. Corporate Guarantee of RHC Holding Private Limited E. Unconditional and irrevocable joint and several Personal Guarantees from Singh Brothers F. Assignment of insurance of the aircraft in favour of lender	Vol. Pg.230 168,	G H

A	30.06.2014	10,00,000 FHL shares pledged in favour of ABL to secure credit facility of Rs.100 Crores	Vol. 168, Pg.252
	26.09.2014	RBL issued Modified Sanction Letter, requesting pledge of FHL Shares.	Vol. 178, Pg.41
B	30.09.2014	Standby Letter of Credit for Rs.220.5 Crores extended by YBL to LVL. This facility was closed on 27.09.2016.	Vol. 200, Pg.3
	Sep '2014	Standby Letter of Credit for USD 72.5 mn executed between RCMIML and ABL. 75,00,000 FHL shares pledged in favour of ABL.	Vol. 197, Pg.2
C	08.10.2014	Credit Facility dated 27.07.2012 stood enhanced to Rs.63.75 Crores [Rs.33.75 Crores + 8 Crores + 15 Crores + 7 Crores] by RBL against following securities: A. First pari passu charge on all current assets and movable fixed assets including the security deposits of the company, both present and future. B. Unconditional and irrevocable corporate guarantee of RHC, and same to remain outstanding during currency of RBL Loan	Vol. 178, Pg.43
D	15.10.2014	52,04,000 FHL Shares pledged by FHPL in favour of RBL [w.r.t. 26.09.2014]	Vol. 178, Pg.65
	20.02.2015	YBL sanctioned a loan amount of Rs.500 Crores to OIL. This facility was closed on 23.02.2017	Vol. 200, Pg.4
E	20.02.2015	65,10,000 FHL Shares pledged in favour of YBL to secure facilities extended to LAL (Rs.100 Crores) + HTL (Rs.200 Crores) + LVL (Rs.220.5 Crores + Rs.130 Crores) This facility was closed	Vol. 173, Pg.184
	25.02.2015	Release of 40,000 FHL Shares by ABL [w.r.t. 28.03.2014]	Vol. 197, Pg.2
F	05.06.2015	15,72,000 FHL Shares pledged in favour of YBL to secure facilities extended to LAL (Rs.100 Crores) + HTL (Rs.200 Crores) + LVL (Rs.220.5 Crores + Rs.130 Crores) This facility was closed.	Vol. 174, Pg.221
	29.07.2015	Release of 33,50,000 FHL Shares by ABL [w.r.t. 28.03.2014] Release of 15,04,000 FHL Shares by RBL [w.r.t. 29.11.2012] Release of 50,00,000 FHL Shares by YBL [w.r.t. 02.05.2014]	Vol. 197, Pg.3 Vol. 201, Pg.3 Vol. 200, Pg.5
G	11.09.2015	44,43,000 FHL Shares pledged in favour of YBL to secure facilities extended to LAL (Rs.100 Crores) + HTL (Rs.200 Crores) + LVL (Rs.220.5 Crores + Rs.130 Crores) This facility was closed.	Vol. 174, Pg.206
	28.09.2015	2,15,00,000 FHL shares additionally pledged in favour of ABL in respect of Standby Letter of Credit for USD 72.5 million executed between RCMIML and ABL.	Vol. 197, Pg.3
H	29.09.2015	Release of 75,00,000 FHL Shares by ABL [w.r.t. 28.03.2014]	Vol. 197, Pg.3

30.09.2015	26,80,000 FHL Shares pledged with LVB against Rs.40 Crores Credit Facility	Vol. 202, Pg.2	A
30.09.2015	Rs.250 Crores extended by YBL to FSSPL. This facility was closed on 16.10.2019 via sale of securities	Vol. 200, Pg.5 Vol. 175, Pg. 578	B
07.10.2015	Brand License Agreement executed between RHC and FHL	Vol. 104, Pg.292	C
14.10.2015	Release of 1,95,00,000 FHL Shares by ABL [w.r.t. 29.09.2015]	Vol. 197, Pg.3	D
16.10.2015	46,30,000 FHL Shares pledged in favour of YBL to secure Rs.250 Crores credit facility to FSSPL. These pledges were released on 27.11.2015.	Vol. 200, Pg.6	E
27.10.2015	2,37,35,000 FHL Shares pledged in favour of YBL to secure Rs.250 Crores credit facility to FSSPL	Vol. 174, Pg.267	F
29.10.2015	30.09.2015 Facility by LVB continued for Sanction Letter dated 29.10.2015	Vol. 202, Pg.2	G
10.11.2015	Brand License Agreement executed between RHC and SRL Limited	Vol. 104, Pg.352	H
27.11.2015	46,30,000 FHL Shares released by YBL [w.r.t. 16.10.2015]	Vol. 200, Pg.6	
27.11.2015	38,28,000 FHL Shares pledged in favour of YBL to secure facilities extended to LAL (Rs.100 Crores) + HTL (Rs.200 Crores) + LVL (Rs.220.5 Crores + Rs.130 Crores)	Vol. 174, Pg.211	
	This facility was closed.	Vol. 200, Pg.7	
12.01.2016	Credit Facility dated 27.07.2012 modified by RBL to Rs. 52.50 crores (Rs.22,50,00,000 + 15,00,00,000 + 8,00,00,000 + 7,00,00,000)	Vol. 178, Pg.56	
18.02.2016	Release of 11,00,000 FHL Shares by RBL [w.r.t. 29.11.2012]	Vol. 201, Pg.3	
11.03.2016	Credit Facility [w.r.t. 27.07.2012] enhanced by RBL by Rs.40 crores against pledge of FHL shares to the extent of 1.40 X of facility amount with following security: A. First pari pasu charge on all current assets and movable fixed assets of the company, both present and future and B. Pledge of shares of REL and FHL to the extent of 1.40 X of the facility amount	Vol. 178, Pg.59-64	
	30.09.2015 Facility by LVB continued for Sanction Letter dated 29.10.2015	Vol. 202, Pg.2	
14.03.2016	Credit Facility Agreement containing a top up mechanism between RHC and CSFIPL secured by pledge of 1,86,75,000 FHL Shares	Vol. 171, Pg.25	

A	15.03.2016	35,47,500 FHL Shares pledged in favour of YBL to secure facilities extended to LAL (Rs.100 Crores) + HTL (Rs.200 Crores) + LVL (Rs.220.5 Crores + Rs.130 Crores) This facility was closed.	Vol. 174, Pg.216 Vol. 200, Pg.7
	18.03.2016	14,75,000 FHL Shares pledged in favour of RBL [w.r.t. 11.03.2016] In toto, RBL held pledge over 40,75,000 FHL Shares as on 18.03.2016	Vol. 178, Pg.75 Vol. 201, Pg.4
B	28.03.2016	Rs.300 Crores loan extended by YBL to RHC. This facility was closed on 17.03.2017	Vol. 200, Pg.7
	Pre 30.03.2016	5,41,35,500 FHL Shares were already encumbered in favour of YBL prior to 30.03.2016.	Vol. 200, Pg.1
C	30.03.2016	Agreement to Pledge 2,65,02,852 FHL shares in favour of YBL by FHHPL	Vol. 174, Pg.346,392 Vol. 200, Pg.8
	Pre 29.04.2016	1,36,50,000 FHL Shares stood encumbered in favour of ABL	Vol. 197, Pg.3
	Pre 29.04.2016	8,06,38,352 FHL Shares were encumbered in favour of YBL	Vol. 228, Pg.4 Vol. 200, Pg.8
D	29.04.2016	Arbitral Award in favour of Daiichi	Vol.5, Pg.8
	18.05.2016	Ss.47/49 Arbitration and Conciliation Act, 1996 preferred before the Delhi High Court by Daiichi being OMP (FEA) (Comm.) No. 06/2016	Vol. 1, Pg.24
	20.05.2016	Credit Facility Agreement containing a top up mechanism between RHC and CSFIPL secured by pledge of 68,50,000 FHL Shares	Vol. 171, Pg.117,232
E	24.05.2016	First Undertaking before the Delhi High Court by Respondents	Vol. 1, Pg.78
	30.06.2016	Standby Letter of Credit of Rs.304.5 Crores extended by YBL to LVL.	Vol. 200, Pg.9
	19.07.2016	Rs.72.5 Crores remains outstanding as on 23.03.2021. YBL extended Credit Facility of Rs.304.5 Crores to Ligare Voyages Ireland Ltd. for refinance of loan granted by ICICI Bank and Punjab National Bank for purchase of 5 Aircrafts	Vol. 175, Pg.508 Vol. 176, Pg.710, 743 Vol. 224, Pg.8
F	27.07.2016	Put Option Agreement executed between FHHPL and YBL recording that pursuant to various loans to group companies, YBL had a right to call upon FHHPL to pay any amount due to YBL	Vol. 200, Pg.9, 44
	27.07.2016	91,43,554 FHL Shares were encumbered in favour of YBL to secure Put Option	Vol. 200, Pg.10 Vol. 175, Pg.424
G	28.07.2016	Cross Collateral by YBL over 2,65,02,852 FHL Shares [w.r.t. 30.03.2016] to secure LVL [Rs.304.5 Crores] Facility	Vol. 175, Pg.401
	22.08.2016	Submission before the Delhi High Court by the Respondents that there is no change in ownership of assets (Second Undertaking)	Vol. 1, Pg.87
	26.08.2016	Cross Collateral by YBL over 1,05,50,000 FHL Shares [w.r.t. 02.05.2014] to secure LVL [Rs.304.5 Crores] Facility	Vol. 173, Pg.160
H	26.08.2016	Cross Collateral by YBL over 1,99,00,500 FHL Shares [w.r.t. 20.02.2015, 05.06.2015, 11.09.2015, 27.11.2015, 15.03.2016] to secure LAL (Rs.100 Crores), LVL [Rs.304.5 Crores], LVL (Rs.130 Crores), HTL (Rs.200 Crores) Facility	Vol. 174, Pg.240, 252

30.08.2016	7,25,000 FHL Shares pledged in favour of LVB against 26.10.2016 Facility	Vol. 202, Pg.2	A
30.09.2016	20,00,000 FHL shares additionally pledged in favour of ABL w.r.t. Standby Letter of Credit for USD 72.5 mn executed between RCMIML and ABL.	Vol. 169, Pg.424	B
30.09.2016	60,00,000 FHL shares additionally pledged in favour of ABL w.r.t. Standby Letter of Credit for USD 72.5 mn executed between RCMIML and ABL.	Vol. 169, Pg.424	C
30.09.2016	50,00,000 FHL shares additionally pledged in favour of ABL w.r.t. Standby Letter of Credit for USD 72.5 mn executed between RCMIML and ABL	Vol. 169, Pg.424	D
30.09.2016	10,00,000 FHL shares additionally pledged in favour of ABL w.r.t. Standby Letter of Credit for USD 72.5 mn executed between RCMIML and ABL	Vol. 169, Pg.424	E
30.09.2016	2,00,000 FHL shares additionally pledged in favour of ABL w.r.t. Standby Letter of Credit for USD 72.5 mn executed between RCMIML and ABL	Vol. 169, Pg.424	F
30.09.2016	Total 40,75,000 FHL Shares stood encumbered in favour of RBL	Vol. 201, Pg.4	G
04.10.2016	Release of 20,00,000 FHL Shares by ABL [w.r.t. 29.09.2015]	Vol. 197, Pg.4, 44	H
07.10.2016	OIL paid back Rs.161 Crores to YBL against loan sanctioned on 20.02.2015	Vol. 224, Pg.6	
31.10.2016	38,95,000 FHL Shares pledged in favour of LVB against 26.10.2016 Facility	Vol. 202, Pg.2	
02.12.2016	Affidavit of Assets preferred by Singh Brothers, OIL, RHC before the Delhi High Court	Vol. 54, Pg.31,39,46,51	
09.12.2016	LVB released 18,00,000 FHL Shares against reduction of Loan Facility of 26.10.2016 from Rs.150 Crores to Rs.100 Crores	Vol. 202, Pg.3	
15.12.2016	Total of 2,58,50,000 FHL Shares stood encumbered in favour of YBL	Vol. 228, Pg.4	
23.12.2016	YBL sanctioned a loan amount of Rs.565 Crores to OIL	Vol. 175, Pg.521	
	Rs.225 Crores released immediately. Rs.430.4 Crores remain outstanding as of 23.03.2021.	Vol. 200, Pg.11 Vol. 176, Pg.754, 786	
05.01.2017	Loan cum Pledge Agreement executed between Ambit, RHC and FHHPL	Vol. 159, Pg.35	
10.01.2017	Cross Collateral [w.r.t. 27.10.2015] over 2,37,35,000 FHL Shares to secure LVL [Rs.304.5 Crores] Facility by YBL	Vol. 174, Pg.307	
17.01.2017	Delhi High Court Order recording Respondent's Submission that undertaking dated 24.05.2016 still holds (Third Undertaking)		

A	Pre23.1.17, 6.3.17	ABL held pledges of 2,58,50,000 FHL Shares	Vol.197, Pg.5
	23.01.2017	Undertaking furnished before the Delhi High Court by the Respondents (Fourth Undertaking)	
	08.02.2017	Delhi High Court Order recording Respondents' undertaking (Fifth Undertaking)	Vol. 1, Pg.143
B	15.02.2017	Pledge over 58,31,000 FHL Shares recorded in favour of YBL	Vol. 174, Pg.255
	23.02.2017	OIL paid back Rs.339 Crores to YBL against loan sanctioned on 20.02.2015	Vol. 224, Pg.6
C	28.02.2017	Affidavit filed by Daiichi Sankyo annexing a list of all outstanding charges of all Respondent Companies in the Enforcement Petition till 27.02.2017 per filings with Ministry of Corporate Affairs	Vol. 1, Pg.211-2281
	06.03.2017	Sixth Undertaking furnished before the Delhi High Court by the Respondents	
D	09.03.2017	Amendment to 27.07.2016 Put Option Agreement between FHHPL & YBL, recording that Put Option Right would now also cover an additional facility of OIL (Rs.565 crores)	Vol. 200, Pg.63
	09.03.2017	Top up Pledge over additional shares of REL created in favour of Ambit due to margin shortfall	Vol. 159, Pg.96
E	09.03.2017	Cross Collateral by YBL [w.r.t. 02.05.2014] over 1,05,50,000 FHL Shares to secure Put Option w.r.t. RHC (Rs.300 Crores), LAL (Rs.100 Crores), HTL (Rs.200 Crores), LVL (Rs.304.5 Crores), Dion (Rs.130 Crores), OIL (565 Crores), FSSPL (Rs.250 Crores)	Vol. 176,177 Pg.797, 811
F	09.03.2017	Cross Collateral by YBL [w.r.t. 20.02.2015, 05.06.2015, 11.09.2015, 27.11.2015, 15.03.2016, 30.03.2016] over 2,57,31,500 FHL Shares to secure Put Option w.r.t. RHC (Rs.300 Crores), LAL (Rs.100 Crores), HTL (Rs.200 Crores), LVL (Rs.304.5 Crores), Dion (Rs.130 Crores), OIL (565 Crores), FSSPL (Rs.250 Crores)	Vol. 177, Pg.815,828
G	09.03.2017	Cross Collateral by YBL [w.r.t. 27.10.2015] over 2,37,35,000 FHL Shares to secure Put Option w.r.t. RHC (Rs.300 Crores), LAL (Rs.100 Crores), HTL (Rs.200 Crores), LVL (Rs.304.5 Crores), Dion (Rs.130 Crores), OIL (565 Crores), FSSPL (Rs.250 Crores)	Vol. 177, Pg.832
	15.03.2017	14.03.2016 Credit Facility between CFSIPL and RHC Holdings Ltd. closed. CFSIPL released all pledges over shares of FHL.	Vol. 203, Pg.2
	22.03.2017	20.05.2016 Credit Facility between CFSIPL and RHC Holdings Ltd. closed. CFSIPL released all pledges over shares of FHL.	Vol. 203, Pg.2
H	March'17	YBL released Rs.340 Crores to Oscar against loan sanctioned on 23.12.2016	Vol. 224, Pg.6

03.05.2017	Loan of Rs.150 Crores sanctioned by YBL to LAL. Rs.10 Crores remains outstanding as of 23.02.2021.	Vol. 200, Pg.14 Vol. 175, Pg.530	A
19.05.2017	Standby Letter of Credit for Rs.100 crores executed between DION and ABL. 42,33,333 FHL shares pledged in favour of ABL.	Vol. 170, Pg.649	B
19.05.2017	Short Term Loan Facility for Rs.140 crores executed between DION and ABL. 64,16,667 FHL shares pledged in favour of ABL.	Vol. 170, Pg.672	C
19.05.2017	3,50,000 FHL shares additionally pledged in favour of ABL in relation to Standby Letter of Credit for Rs.100 crores executed between DION and ABL.	Vol. 170, Pg.649	D
24.05.2017	Letter of Intent issued by IHH Healthcare Berhad to FHL and connected entities in furtherance of a proposal for acquisition	Vol. 86, Pg.32	E
02.06.2017	Top up Pledge over additional shares of FHL created in favour of Ambit due to margin shortfall	Vol. 159, Pg.95	F
07.06.2017	Release of 1,06,50,000 FHL Shares by ABL [w.r.t. 28.03.2014]	Vol. 197, Pg.84-92	G
07.06.2017	Pledge Agreement in respect of 22,00,000 FHL Shares already encumbered in favour of RBL w.r.t. 29.11.2012 to also secure credit facility w.r.t. 27.07.2012	Vol. 178, Pg.92	H
15.06.2017	Pledge Agreement to create a Cross Collateral over 1,42,00,000 FHL Shares already pledged [w.r.t. 30.09.2016] to secure Ligare Facilities	Vol. 168, Pg.294	
15.06.2017	Pledge Agreement to create a Cross Collateral over 1,42,00,000 FHL Shares already pledged [w.r.t. 19.05.2017] to secure DION Facility	Vol. 170, Pg.695	
15.06.2017	Pledge Agreement to create a Cross Collateral over 1,42,00,000 FHL Shares already pledged [w.r.t. 19.05.2017] to secure DION Facility	Vol. 170, Pg.718	
19.06.2017	Seventh Undertaking before the Delhi High Court by the Respondents		
21.06.2017	Eighth Undertaking before the Delhi High Court by the Respondents Order under challenge in the present SLP 		
20 -23.6.17	Release of 60,00,000 FHL Shares by ABL [w.r.t. 30.09.2016] Release of 18,25,000 FHL Shares by ABL [w.r.t. 30.09.2016]	Vol. 197, Pg.7,8	
22.06.2017	SLP (C) 20417/2017 preferred before the Supreme Court against 21.06.2017 Delhi High Court Order	Vol. 1	
Post 23.06.2017	ABL continued to hold pledge over 1,83,75,000 FHL Shares	Vol. 197, Pg.9	
11.07.2017	LVB released 1,00,000 FHL Shares on payment of Rs.1.6 Crores	Vol. 202, Pg.3	
17.07.2017	Ambit issued a Loan Recall Notice to RHC and called upon RHC to repay entire loan amount with interest	Vol. 159, Pg.97	
17.07.2017	RBL issued a Loan Recall Notice w.r.t. 29.11.2012 Facility	Vol. 201, Pg.7	
18.07.2017	Pledge Agreement to create a Cross Collateral over 45,83,333 FHL Shares already pledged [w.r.t. 19.05.2017 ABL] to secure RHC Holding Facility	Vol. 167, Pg.155	

A	18.07.2017	Pledge Agreement to create a Cross Collateral over 64,16,667 FHL Shares already pledged [w.r.t. 19.05.2017 ABL] to secure RHC Holding Facility	Vol. 167, Pg.180
	18.07.2017	Pledge Agreement to create a Cross Collateral over 10,00,000 FHL Shares already pledged [w.r.t. 30.06.2014& 28.07.2016 ABL] to secure RHC Holding Facility	Vol. 168, Pg.204
B	18.07.2017	Pledge Agreement to create a Cross Collateral over 45,83,833 FHL Shares already pledged [w.r.t. 19.05.2017 ABL] to secure Ligare Facility	Vol. 168, Pg.319
	18.07.2017	Pledge Agreement to create a Cross Collateral over 64,16,667 FHL Shares already pledged [w.r.t. 19.05.2017 ABL] to secure Ligare Facility	Vol. 168, Pg.344
C	18.07.2017	Pledge Agreement to create a Cross Collateral over 10,00,000 FHL Shares already pledged [w.r.t. 30.06.2014& 28.07.2016 ABL] to secure 30.09.2016 Facility	Vol. 169, Pg.446
	18.07.2017	Pledge Agreement to create a Cross Collateral over 45,83,333 FHL Shares already pledged [w.r.t. 19.05.2017 ABL] to secure 30.09.2016 Facility	Vol. 169, Pg.470
D	18.07.2017	Pledge Agreement to create a Cross Collateral over 64,16,667 FHL Shares already pledged [w.r.t. 19.05.2017 ABL] to secure 30.09.2016 Facility	Vol. 169, Pg.493
	18.07.2017	Pledge Agreement to create a Cross Collateral over 64,16,667 FHL Shares already pledged [w.r.t. 19.05.2017 ABL] to secure another 19.05.2017 ABL Facility	Vol. 170, Pg.764
E	18.07.2017	Pledge Agreement to create a Cross Collateral over 45,83,333 FHL Shares already pledged [w.r.t. 19.05.2017 ABL] to secure another 19.05.2017 Facility	Vol. 170, Pg.741
	18.07.2017	LVB sold 5,00,000 FHL shares and realised Rs.7,44,96,752	Vol. 202, Pg.4
	18.07.2017	Cross Collateral over 1,05,50,000 FHL Shares [w.r.t. 02.05.2014] to secure LAL Facility by YBL (Rs.150 Crores)	Vol. 173, Pg.176
F	18.07.2017	Cross Collateral over 2,57,31,500 FHL Shares [w.r.t. 20.02.2015, 05.06.2015, 11.09.2015, 27.11.2015, 15.03.2016, 30.03.2016] to secure LAL Facility by YBL (Rs.150 Crores)	Vol. 174, Pg.260
	18.07.2017	Cross Collateral over 2,65,02,852 FHL Shares [w.r.t. 30.03.2016] to secure LAL Facility by YBL (Rs.150 Crores)	Vol. 406, Pg.175
G	18.07.2017	Pledge invoked against 5,00,000 FHL Shares by LVB	Vol. 202, Pg.4
	19.07.2017	Pledge invoked against 2,80,000 + 7,25,000 + 38,95,000 FHL Shares by LVB	Vol. 202, Pg.4
	19.07.2017	LVB sold 11,00,000 FHL shares and realised Rs.16,61,19,096	Vol. 202, Pg.4
	19.07.2017	LVB sold 10,00,000 FHL shares and realised Rs.15,20,65,630	Vol. 202, Pg.4
	19.07.2017	LVB sold 5,50,000 FHL shares and realised Rs.8,29,46,812	Vol. 202, Pg.4
H	19.07.2017	LVB sold 10,00,000 FHL shares and realised Rs.15,06,83,015	Vol. 202, Pg.4

21.07.2017	RHC repaid Ambit's entire outstanding	Vol. 231, Pg.2	A
21.07.2017	Pledge over 2,98,15,406 FHL Shares recorded in favour of YBL [w.r.t. 30.03.2016, 27.07.2016]	Vol. 200, Pg.15	
24.07.2017	Ambit released the pledge over shares of FHL and REL	Vol. 231, Pg.2	
08.08.2017	RBL released 2,00,000 FHL Shares [w.r.t. 29.11.2012] Total no. of encumbered shares of FHL with RBL stood at 38,75,000	Vol. 201, Pg.7	B
10.08.2017	RBL received Rs. 3.20 Crores [w.r.t. 29.11.2012]	Vol. 201, Pg.8	
11.08.2017	Order by this Court directing Status Quo w.r.t. shareholding of FHHPL in FHL		
11.08.2017	Total FHL shares that stood encumbered in favour of ABL were 1,83,75,000	Vol. 228, Pg.4	C
14.08.2017	Loan Recall Notice issued by RBL w.r.t. 27.07.2012 Facility	Vol. 201, Pg.8 Vol. 23, Pg.42	
14.08.2017	LVB sold 1,00,000 FHL shares and realised Rs.1,49,79,271	Vol. 202, Pg.4	D
14.08.2017	LVB sold 4,00,000 FHL Shares and realised Rs.6,06,50,588	Vol. 202, Pg.4	
14.08.2017	LVB sold 3,34,350 FHL Shares and realised Rs.5,02,68,887.26	Vol. 202, Pg.5	
14.08.2017	LVB sold 65,000 FHL Shares and realised Rs.98,60,578	Vol. 202, Pg.5	
14.08.2017	LVB sold 1,50,650 FHL Shares and realised Rs.2,28,54,809	Vol. 202, Pg.5	
14.08.2017	LVB sold 2,00,000 FHL Shares and realised Rs.2,99,49,031	Vol. 202, Pg.5	
14.08.2017	Pledge created by Indiabulls	Vol. 1, LOD filed by Kunal Chhaterji Pg.20	E
31.08.2017	Order by this Court recording that 11.08.2017 Order operative w.r.t. encumbered and unencumbered shares of FHL held by FHHPL		
08.02.2018	Singh Brothers tendered their resignation from the Fortis and Religare Board of Directors	Vol. 1, LOD filed by Kunal Chhaterji Pg.23	F
12.02.2018	Master Purchase Agreement executed in Singapore for acquisition of RHT Assets for Rs.4650 Crores. It was endorsed by Gurpreet Singh Dhillon on behalf of RHT.	Vol. 1, LOD filed by Kunal Chhaterji Pg.24	
14.02.2018	Singh Brothers resigned from the Board of Religare Enterprises Limited	Vol. 67, Pg.33	G
15.02.2018	This Court modified its Order and allowed the banks to enforce their pledges created prior to 11.08.2017		
16.02.2018	YBL invoked its pledge over 8,97,81,906 FHL Shares	Vol. 200, Pg.16	
20.02.2018	ABL invoked its pledge over 1,83,75,000 Shares	Vol. 197, Pg.10	
20.02.2018	RBL sold 33,75,000 Shares and realised Rs.47,04,11,504	Vol. 201, Pg.11	
01.03.2018	Pledge over 16,500 FHL shares released by Ambit	Vol. 101, Pg.159	H

A	March' 18	Invocation of pledges held by various banks caused fall in shareholding of FHHPL in FHL from 71.7% to 0.66%	Vol. 1, LOD filed by Kunal Chhaterji Pg.28
	24.05.2018	RBL sold 80,000 Shares and realised Rs.1,14,54,502 RBL left with 4,20,000 Shares	Vol. 201, Pg.11
B	Jun-Sep'18	Board of Directors of Religare entities were reconstituted and initiated insolvency proceedings against 23 entities which owed Rs.2,300 crores	Vol. 227, Pg.28
	13.07.2018	Share Subscription Agreement executed between FHL and IHH	Vol. 1, LOD filed by Kunal Chhaterji Pg.36
C	24.09.2018	RHC Holdings' Affidavit informing this Court about violation of 11.08.2017 SCI Order by IHFL having pledged 12,25,000 shares of FHL	Vol. 38
	06.10.2018	Daiichi filed Contempt Petition before this Court	Vol. 39, Pg.5
	29.10.2018	Daiichi granted permission to file formal intervention Application for Intervention in NCLT	Vol. 119 @ Pg.97
	07.12.2018	Daiichi preferred Application for Intervention before NCLT	Vol. 75 @ Pg.10
D	17.12.2018	REL preferred Complaint u/Ss. 210, 212 and 447 of Companies Act 2013 against Singh Brothers and known associates	Vol. 67 @ Pg.62
	18.12.2018	RFL preferred Complaint against Singh Brothers and their associates before Economic Offences Wing, Delhi Police – FIR 50/2019	Vol.67 @ Pg.98
E	14.03.2019	SEBI passed an order consequent to an independent investigation which found large scale diversion of funds from the REL and its subsidiaries at the behest of promoters. REL and RFL directed to recall the loans and take recovery steps for entities belonging to promoter group	Vol.67 @ Pg.145
	22.03.2019	Complaint preferred by REL against erstwhile promoters and their entities including Oscar Investments Limited with EOW, Delhi Police for misappropriation to the tune of Rs.525 crores	Vol. 227 @ Pg.29
F	27.03.2019	NCLT reserved order in the Daiichi matter	Vol. 119 @ Pg.106
	05.04.2019	I.A. 58004/2019 mentioned before SCI and interim stay was granted against NCLT proceedings in favour of Daiichi	Vol. 67 @ Pg.28
	10.04.2019	Application for vacation of interim stay dated 05.04.2019 preferred by Religare	Vol. 67
G	08.08.2019	RFL preferred complaint against OSPL Infradeal Ltd, the Singh Brothers and RHC Holding for misappropriation to the tune of Rs.250 crores – FIR 64/2020	Vol. 227 @ Pg.29
	11.09.2019	Vide separate order, SEBI confirmed directions issued by it on 14.03.2019	Vol. 75 @ Pg.231
H	21.09.2019	RFL preferred Complaint against ZEE Group Companies, Singh Brothers and RHC Holdings for causing wrongful loss of Rs.150 crores – FIR 82/2020	Vol. 227 @ Pg.29

23.09.2019	FIR 189/2019 registered based on Complaint filed by RFL on 15.05.2019	Vol. 227 @ Pg.30	A
15.11.2019	This Court held Singh Brothers and officials of IFHL guilty of contempt	Vol. 226, Pg.4	
06.01.2020	Chargesheet in FIR 50/2019 filed by EOW	Vol. 120 @ Pg.131	B
03.02.2020	This Court granted time to Singh Brothers to come up with proposal to purge contempt	Vol. 226, Pg.5	
23.03.2020	Chargesheet in FIR 189/2019 filed by EOW	Vol. 121 @ Pg.269	C
15.10.2020	Delhi High Court judgement		
12.11.2020	SEBI passed order directing initiation of adjudication proceedings against 10 entities for diversification of funds	Vol. 211 @ Pg.9	D
11.02.2021	Notice Issued to Lenders – Banks and Financial Institutions by this Court		
18.02.2021	Questions posed to Lenders by this Court [18.02.2021 Order]		

15. The submissions advanced on behalf of the concerned Contemnors, Respondents, Noticees and other parties, with salient points are in the following volumes: -

- A. Volume 126: Submissions by Securities and Exchange Board of India
- B. Volume 157: Brief Submissions by Mr. Arvind P. Datar regarding Banks and Financial Institutions and Creation of Wrongful Pledges
- C. Volume 160: Julius Baer Capital India Private Limited
- D. Volume 161: Indiabulls Housing Finance Limited
- E. Volume 163: ECL Finance Ltd.
- F. Volume 178: RBL Bank Ltd.
- G. Volume 182: Aditya Birla Finance Limited
- H. Volume 183: First Abu Dhabi Bank Limited
- I. Volume 191: Kotak Mahindra Bank Limited
- J. Volume 203: Credit Suisse Finance Limited
 - Released all pledges and closed both ANR and RHC Facilities before Supreme Court passed its status quo order.

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- A K. Volume 214: Submissions by Religare Finvest Limited (Respondent No.17)
- L. Volume 215: Submissions by Religare Enterprises Limited, Religare Finvest Limited, Religare Comtrade Limited (Respondent No. 16, 17, 18)
- B
 - No final relief has been claimed by the Petitioner against Religare Group
 - Petitioner's Intervention resulted in interim stay in the 23 Matters initiated at the instance of this Respondent before NCLT
- C
 - Respondent, being a financial creditor of the debtor entities, its financial debts rank higher in the waterfall mechanism upon liquidation, as compared to Petitioner's.
 - Religare didn't participate in fraud and was not a beneficiary
- D M. Volume 218, 225, 226: Submissions on behalf of Shivender Mohan Singh & Malvinder Mohan Singh (Contemnor No. 9,10,12,13)
- N. Volume 222: The Petitioner's proposal for purging of contempt by the Respondents
- E
 - 8 Properties being Land Areas and 1 Property being a Building
 - 3 Brands/Trademarks being Religare, SRL and Fortis
 - Cash in Bank available with Ligare Voyages (Ireland) Limited
- F
 - Cancellation of Pledges created or top up rights exercised after 24.05.2016
 - Withdrawal of Amount deposited by Indiabulls on 18.11.2019
- G
 - Recovery from FHL based on assurances made by Singh Brothers before the Delhi High Court
- O. Volume 223: Petitioner's Submissions regarding role of Shivender Mohan Singh
 - In every aspect, the Singh Brothers were together till Delhi High Court pronounced 31.01.2018
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Judgement and Singapore High Court pronounced A
judgement dated 21.12.2018

- P. Volume 224: Submissions by Yes Bank Limited (Noticee No.1)
- YBL is a secured creditor
 - A clean chit has been given to YBL insofar as Subject Encumbrances are concerned
 - YBL, vide submissions in Volumes 173 – 177, 199, clarified that it had created no encumbrances over FHL Shares post 11.08.2017, and subject encumbrances were invoked only pursuant to 15.02.2018 Order by SCI C
 - YBL was not a party before the Delhi High Court when the assurances were given by the Judgement Debtors D
 - YBL is not a judgement debtor qua the Petitioner
 - YBL has several recovery proceedings pending against the JDs
 - FHHPL, under various pledge agreements with YBL, gave a representation that there was no litigation pending qua the FHL Shares. E
 - No personal guarantee obtained from SMS
 - Cross Collateralization is not creation of fresh encumbrances F
- Q. Volume 228: Axis Bank Limited
- A clean chit had been given to ABL
 - Vol.197 Filed
 - No Top Ups created by ABL G
 - Cross Collateralization Agreements only in relation to Pledges that were already encumbered and as per standard industry lending practices
 - ABL invoked all pledges after 15.02.2018 Order H

- A R. Volume 162/229: Submissions by Lakshmi Vilas Bank (Noticee No.17):
- No notice of proceedings
 - Bonafide Transactions(s) with Ranchem
- B • Pledging and Invocation of Pledge on Shares of FHL
- S. Volume 230: Submissions on behalf of Daiichi Sankyo (Petitioner)
- 3 Proceedings pending before this Court –
 1. SLP(C)20417/2017
 2. Contempt Petition (C) 2120/2018
 3. SMC (C) 4/2019
 - Banks and Financial Institutions categorized into three:
 4. 8 Banks that have wilfully violated the orders and assurances given to DHC as well as to SCI
 5. 4 Banks that released the shares and sold no shares after 24.05.2016
 6. 4 Banks and Financial Institutions which neither appeared nor filed any affidavit in compliance with order dated 18.02.2021.
 - Petitioner be permitted to withdraw the Contempt Deposit
- F • Direction to FHL/IHH to bring back Rs.4000 Crores and consequences thereof
- T. Volume 231: Ambit Finvest Private Limited
- Pledge over the shares never invoked
- G 16. We heard Mr. Mukul Rohatgi, Mr. Rakesh Dwivedi, Mr. Arvind P. Datar and Mr. Joydeep Gupta, learned Senior Advocates on behalf of Daiichi while Contemnors Nos.9 and 10 were represented by Mr. Kailash Vasdev and Ms. Meenakshi Arora, learned Senior Advocates. On behalf of YES Bank Ltd. (YBL), Axis Bank Ltd. (ABL) and Indiabulls Housing Finance Limited (IHFL) submissions were advanced by Mr. Shyam

Divan, learned Senior Advocate while rest of the Noticees were A represented by the other learned Counsel.

17. The basic submissions made on behalf of Daiichi were:

- (A) The respondents having suffered a Foreign Award, devised a well-planned scheme to dilute the share-holdings held by companies controlled by said Contemnors Nos.9 and 10; and thus, attempted to frustrate the execution of said award. B
- (B) Various transactions referred to in the documents submitted before the Court clearly show that multiple forms of Security including charge on immovable properties, personal undertakings and other securities were available to the banks and financial institutions. However, what was proceeded against were the shares held by FHHPL in FHL. C
- (C) The manner in which the controlling interest in FHL, which company in turn controlled all the physical assets, was diluted, was doubtful and questionable. Similarly, the acquisition of the controlling interest by IHH/NTK would show that the very same assets are now being controlled by RHT which was nothing but a trust established by Contemnor Nos. 9 and 10. D
- (D) These transactions were not *bona fide* and in order to unravel the truth, this Court may consider appointing Forensic Auditor(s). E

18. In the written submissions filed by Daiichi, the roles of the Judgment Debtors as well as of various entities were specifically dealt with as under:

“A. Judgment Debtors:

I. The Petitioner filed SLP [Vol 1and2] on 22 June 2017 [SLP Vol 1 and 2]. Mr. Rakesh Dwivedi, Senior Advocate, made submissions on behalf of the Petitioner [SLP Vol 221, 223], inter alia, against arguments made by counsel for MMS and SMS (Mr. Kailash Vasdev and Ms. Meenakshi Arora, respectively). Petitioner has also specifically responded to this Hon’ble Court’s query regarding the pleadings against Judgment Debtors in the Contempt Petition [SLP Vol 217] on the basis of which the Contempt Judgment was passed, against them. G H

- A 2. The Judgment Debtors were given full opportunity to respond and defend their case before this Hon'ble Court. MMS and SMS filed separate replies to the SLP and the Contempt Petition. MMS filed its reply affidavit in SLP dated 13 March 2019 (SLP Vol 54, 55) and SMS filed its reply to SLP on 12 March 2019 (SLP Vol 53). MMS also filed its reply to Contempt Petition (SLP Vol 59). In addition, MMS filed a sur-rejoinder in the Contempt Petition (SLP Vol 65). SMS also filed a sur-rejoinder in the Contempt Petition (SLP Vol 62). The Petitioner filed a rejoinder-affidavit to the reply of MMS (SLP Vol. 61). The Petitioner in its rejoinder-affidavit explained how MMS and SMS blatantly misled the court by asserting that the banks and financial institutions had acted on their own accord in invoking their right to top-up under pre-existing contractual obligations. Petitioner also showed how the Respondents obstructed the course of justice by falsely asserting that five crore shares had already been kept aside for satisfying the debts of the banks and financial institutions and that a sufficient number of unencumbered shares were available to satisfy and realize the Award. The Respondents never informed the courts of the existence of "pre-signed slips" which could be used by the banks and financial institutions on account of Respondents' poor economic condition and inability to service the debt or the "manufactured defaults". The Respondents submitted before the DHC that "...[On a Group basis, the market fair value of assets pledged is more than sufficient to meet the liabilities. Were it not to be so, the lenders would have asked for topping of the securities" [SLP Vol. 149/Page 18-25].
- F 3. Mr. Dwivedi made rebuttal submissions against the Judgment Debtors [SLP Vol 221/Page 1-9, 17-23]. His submissions were (i) Judgment Debtors made active misrepresentations regarding unencumbered shares/ existence of top-up clauses to the Petitioner, DHC and this Hon'ble Court; (ii) the value of assets of RHC and Oscar in the form of FHHPL shares derived their value solely from the value of the shares of FHL owned by FHHPL; (iii) there was no fall in the share price of FHL shares due to any steps taken by Daiichi to enforce the Award; and (iv) Judgment Debtors did not take steps in the commercial interest of FHL. In respect of I.A. No. 43119 of 2020 filed by MMS in the SLP, the Petitioner filed its reply [SLP Vol 110/Page 1-11], *inter alia*, agreeing with
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the proposal for a forensic audit of all entities in Table “A” and Table “B” [SLP Vol 222/Page 2]. Furthermore, the Petitioner also agreed to MMS’s request for the sale of land parcels, brand/trademarks and operating companies, and the monies so realized to be deposited with this Hon’ble Court in the Petitioner’s favour. A

4. In response to this Hon’ble Court’s query regarding the proposal for purging of contempt, the Petitioner has proposed certain reliefs against the Judgment Debtors: ([SLP Vol 222/Page 2-4] B

B. Banks and Financial Institutions

5. The Petitioner, pursuant to the Contempt Judgment, in its response to reply filed by FHL in the SMC [SMC Vol 26/Page 27- 37], apprised this Hon’ble Court of the creation of pledges and the exercise of top-ups by banks and financial institutions in collusion with MMS, SMS, other Judgment Debtors, IHH Healthcare Berhad and FHL, which ultimately led to the dilution of the controlling shareholding of OIL and RHC (through FHHPL) in FHL. C D

6. Thereafter, Mr. Arvind P. Datar, Senior Advocate, on behalf of the Petitioner, by way of oral submissions and brief written submissions - filed on 17 February 2021 [SLP Vol 157], informed this Hon’ble Court that wrongful pledges were created after the first assurance was given to the DHC on 24 May 2016. Since these pledges were created in violation of court orders, Mr. Datar requested this Hon’ble Court to pass orders to, *inter alia*, restore the status quo ante in respect of the shareholding of FHHPL in FHL, as on 24 May 2016, and to restitution the Petitioner in respect of creation of all wrongful pledges after 24 May 2016. E F

7. In its written submissions [SLP Vol 125/Page 3], the Petitioner has requested this Hon’ble Court to void the impugned pledges and/securities created after 24 May 2016 or, in the alternate, to compensate and restitution the Petitioner for the loss caused due to the creation of pledges and subsequent sale of shares by banks/financial institutions on or after 24 May 2016 [SLP Vol 125/Page 6-7]. The Petitioner has also informed this Hon’ble Court of the scheme adopted by the banks and financial institutions in collusion with MMS, SMS, FHL and IHH, to deprive the Petitioner of the rights accorded to it on FHL shares by the systemic dilution of G H

- A controlling stake of FHHPL in FHL [SLP Vol 138/Page 7/ Paragraph/9-11,15].
- B 8. In view of the above submissions, this Hon'ble Court, by order dated 18 February 2021, directed various banks and financial institutions to file affidavits responding to certain queries by this Hon'ble Court. In purported compliance with the order dated 18 February 2021, some of the banks and financial institutions have filed their affidavits. The Petitioner has filed additional submissions dated 23 March 2021 [SLP Vol 187] informing this Hon'ble Court of the contemptuous acts of the banks and financial institutions in collusion with the Judgment Debtors. The Petitioner informed this Hon'ble Court that, until May 2017, there could not have been any occasion for a top up by banks or financial institutions as the share price of FHL shares had remained more or less stable and the share price had not been impacted. It was submitted that the banks and financial institutions had actively misled this Hon'ble Court along with the Judgment Debtors to obtain orders dated 15 February 2018 (modification of orders dated 11 August 2017 and 31 August 2017 in SLP) from this Hon'ble Court by submitting that "any change in the status of encumbered assets of the said downstream companies or any change in the shareholding of Respondent No. 1 and 8 herein in the downstream companies in order to reduce liabilities, will not have any negative impact, either on the value of assets or the no. of unencumbered shares" [SLP Vol. 187/Page 4/Paragraph 4]. It was thus submitted by the Petitioner that the banks and financial institutions were fully aware of the court orders and the assurances given to the DHC by the Judgment Debtors and are, therefore, guilty of a deliberate and wilful violation of the orders of the DHC.
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- G 9. Following detailed oral submissions by Senior Counsel on behalf of the banks and financial institutions - Mr. Shyam Divan (Yes, Axis and IHFL), Mr. Gopal Jain (L VB, Julius Baer and First Gulf), Mr. Pinaki Mishra (Credit Suisse), Mr. Ramji Srinivasan (Ambit Finvest) and Mr. Amit Sibal (ECL Finance), the Petitioner filed its rebuttal/rejoinder submissions on 12 May 2021 [SLP Vol. 221/11/10-16, 24-103]. Mr. Dwivedi also made extensive oral submissions rebutting the submissions made by the banks and financial institutions. For the convenience of this Hon'ble Court,
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Mr Dwivedi categorized the banks and financial institutions into A the following three categories:

- (i) Category I: Eight banks that have wilfully violated the orders and assurances given to the DHC as well as to this Hon'ble Court should be issued a notice of contempt [SLP Vol 221/Page 47-64]; B
- (ii) Category II: Four banks that have released shares and have sold no shares after 24 May 2016 [SLP Vol 221/Page 65-71]; and
- (iii) Category III: Four banks and financial institutions which neither appeared nor filed any affidavit in compliance with the order dated 18 February 2021 [SLP Vol 221/Page 83]. C

10. In response to this Hon'ble Court's query regarding the proposal for purging of the contempt by the contemnors, the Petitioner has proposed certain reliefs with respect to the wrongful pledges created by the banks and financial institutions contemptuously and for a direction to conduct a forensic audit. [SLP Vol 222/Page 4-5]. D

C. Fortis Healthcare Limited and IHH Healthcare Berhad

11. Mr. Mukul Rohatgi, Senior Counsel, on behalf of the Petitioner submitted that at the time of issuance of the Award, the Singh Brothers, through their group companies, RHC and OIL, enjoyed a controlling shareholding (71.7%) in FHL, a listed company which owns and controls various hospitals across India [SLP Vol 133]. The ownership of FHL at the relevant times is described in a chart filed by the Petitioner [Annexure W- 1/SLP Vol 133/Page 10] [Also, SMC Vol 26/Page 20]. The Petitioner, at all times, has submitted that the value of shares of RHC and Oscar in FHHPL was derived solely from FHHPL's controlling stake in FHL [SLP Vol 221/Page 2]. E

12. On 06 December 2018, the Petitioner filed I.A. No. 176128 of 2018 in SLP (SLP Vol 40) seeking leave to file additional documents in the Contempt Petition. These documents disclosed the shareholding pattern of FHL for the quarter ending June 2017 to the quarter ending September 2018 in order to highlight the diminution of shareholding held in FHL through FHHPL. The F G H

- A Petitioner had also filed application - IA No.9264 of2018 before the DHC on 16 July 2018 in the enforcement proceedings drawing attention to the press releases dated 27 March 2018 and 13 July 2018 showing that IHH was proposing to acquire FHL and assets ofRHT Trust [SLP Vol 40/page 83-85]. The Petitioner prayed that the Judgment Debtors be directed to deposit the entire decretal amount and FHL be injunctioned from proceeding ahead with the transaction with IHH Healthcare [SLP Vol 40/page 94]. FHL filed a reply to IA 9264 of 2018 on 31 July 2018 [SLP Vol 40/Page 98-127]. The Petitioner has submitted that sufficient material was placed before this Hon'ble Court which established that (i) the Judgment Debtors not only breached the undertakings given to the DHC but they also violated the orders of this Hon'ble Court; (ii) false affidavits were filed by the Judgment Debtors both in the DHC as well as before this Hon'ble Court; and (iii) this Hon'ble Court had been deliberately misled by the Judgment Debtors, and banks and financial institutions to obtain a modification on 15 February 2018 of the status quo orders dated 11 August 2017 and 31August 2017.
- B 13. The Petitioner also filed an application for directions (I.A. No. 8948 of 2019) in the Contempt Petition on 15 January 2019, upon learning that, despite this Hon'ble Court's order dated 14 December 2018, the transaction of transferring the controlling stake in FHL to IHH was proceeding ahead and the amount of INR 4000 crores received by FHL was being transferred to RHT Trust, in which the Singh Brothers and Judgment Debtors had a substantial interest. The Petitioner had prayed in this application that the transfer of funds to RHT be injunctioned until the undertaking recorded in DHC order dated 21 June 2017 was fulfilled/satisfied, and also to ensure compliance with the order dated 14 December 2018. [SLP Vol 45/page 9-19].
- C 14. The Petitioner filed another application for directions (IA No. 15162 of 2019) in the Contempt Petition on 24 January 2019 [SLP Vol 46/Page 1-5] after ascertaining that FHL had completed the acquisition of portfolio assets ofRHT and on 15 January 2019 INR 4650 crores had been transferred in violation of this Hon'ble Court's order dated 14 December 2018 within a few hours of Petitioner's application. FHL filed a reply to I.A. No. 8948 of2019
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[SLP Vol 50] and to I.A. No. 15162 of 2019 [SLP Vol 49] in A
February 2019.

15. On 09 March 2021, during the course of oral submissions, FHL defended the RHT transaction and submitted that FHL's actions did not amount to an act of contempt. Mr. Datar, in his oral and written submissions dated 18 March 2021 [SLP Vol 185], while addressing this Hon'ble Court's queries related to the role of IHH, FHL and RHT, highlighted the clandestine method by which the amount of INR 4000 crores was transferred out of India, despite knowledge of the pending application and the status quo order dated 14 December 2018. Mr. Datar also submitted that the remittance of INR 4000 crores was in clear violation of the status quo order dated 14 December 2018. He submitted that since RHT had, on 31 December 2018, made a disclosure to the Singapore stock exchange of the extension of the long stop date to 26 March 2019 for the RHT Transaction, there was no apparent urgency to remit this amount to RHT on 15 January 2019. To frustrate the claims of the Petitioner further, the monies received in violation of the order dated 14 December 2018 were immediately distributed by RHT to its unitholders [SLP Vol 185/Page 9]. Of this amount, FHL has admittedly received - INR 817 crores [SMC Vol 37/Page 81].

16. Mr. Datar briefly reiterated the Petitioner's position on the RHT transaction during the closing arguments on 12 May 2021. Mr. Datar also placed reliance on the principle of tort of conspiracy to explain the large-scale conspiracy carried out by the banks and financial institutions in tandem with the Respondents, FHL and IHH, and argued that that it is only just and proper that FHL is directed to make available the amount of INR 4000 crores for Daiichi to ensure restitution in respect of the undertaking given by its Chief Executive Officer and Managing Director (SMS and MMS respectively) on 21 June 2017 [SMC 26/Page 63/Paragraph 97].

17. In response to this Hon'ble Court's query regarding the proposal for purging of contempt, the Petitioner has proposed certain reliefs against Fortis Healthcare Limited and IHH Healthcare Berhad [SLP Vol 222/Page 6].

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D. RHT Trust, Singapore

18. Mr. Datar made oral submissions regarding the FHL-IHH-RHT transaction. In a nutshell, the submissions were as follows: (i) Mr. Gurinder Singh Dhillon and Mr. Gurpreet Singh Dhillon are unitholders of RHT. Mr Gurpreet Singh Dhillon was an executive director and chief executive officer of RHT [SLP Vol 26/Page 61-62]; (ii) FHL-IHH-RHT transaction was initially negotiated in 2017 between the Singh Brothers and IHH [SLP Vol 26/Page 37]; and (iii) FHL-IHH-RHT transaction was undertaken at the behest of and for the mutual benefit of the Singh Brothers, FHL, IHH and various banks and financial institutions [SLP Vol 26/Page 43]. It should be noted that Mr. Gurinder Singh Dhillon and Mr. Gurpreet Singh Dhillon are close relatives of the Singh Brothers and it is probable that the Dhillon family (of which Mr. Gurinder Singh Dhillon and Mr. Gurpreet Singh Dhillon are members) also benefitted from the FHL-IHH-RHT transaction.

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19. In response to this Hon'ble Court's query regarding the proposal for purging of contempt, the Petitioner has proposed certain reliefs against RHT including a notice to RHT. [SLP Vol 222/Page 6].

E. Religare

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20. Mr. Krishnan Venugopal, Senior Counsel, made extensive oral submissions on behalf of the Petitioner in reply to the arguments made by Mr. C.U. Singh, Senior Advocate, appearing for Religare Enterprises Limited, Religare Comtrade Limited and Religare Finvest Limited ("Religare Group"). The Religare Group has sought vacation of the order dated 05 April 2019 passed by this Hon'ble Court in SLP thereby staying the insolvency proceedings against 23 entities before the National Company Law Tribunal, Delhi.

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21. Mr. Venugopal relied on his rebuttal submissions [SLP Vol 220] and convenience compilation [SLP Vol 209]. Further, reliance was also placed on the application for additional documents [SLP Vol 211] where he highlighted that the order passed by SEBI on 14 March 2019 had, in fact, been revoked by order dated 12 November 2020. The submissions made by Mr. Venugopal, in a nutshell, were as follows: (i) Religare Group has not initiated insolvency proceedings against eight out of the nine entities whose lands have been offered for sale; (ii) the lands acquired by these

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companies were acquired mostly before 2010, whereas Religare Group gave loans only in 2016-2018 and therefore, Religare Group's loans could not possibly have been used to acquire those lands; (iii) entities in Religare Group are not decree holders and are therefore not entitled to share in any amounts recovered pursuant to the present proceedings, which proposition has been settled in the facts of this case itself by the High Court of Delhi as well as by this Hon'ble Court; and (iv) since Religare Group's insolvency petitions are admittedly premised on fraud, they must not be permitted to be admitted.

22. During the course of closing submissions on behalf of the Petitioner, Mr. Rakesh Dwivedi, sought a continuance of the stay order dated 05 April 2019 as it has a direct bearing on the outcome of the present Contempt Petition. It was submitted on behalf of the Petitioner that, in the absence of continuation of this order, the assets that may be utilized for the purging of contempt committed by the Singh Brothers will become subject to insolvency proceedings thereby jeopardizing the process of purging of contempt. [SLP Vol 222/Page 7].

F. Miscellaneous

23. Withdrawal of INR 17,93,40,000 deposited by Contemnor Nos. 1- 8 (IHFL and IVL, and its directors) ("Contempt Deposit") in compliance with the direction contained in paragraph 51 (i) of the Contempt Judgment. Mr. Jaideep Gupta, Senior Advocate, made submissions on behalf of Daiichi on 12 May 2021. He submitted that the Petitioner is entitled to receive the Contempt Deposit and, hence, it should be permitted to withdraw the Contempt Deposit, as prayed for in IA No. 50764 of 2020 in the Contempt Petition. [SLP Vol 91].

24. The Contempt Deposit was made as a result of the contemptuous conduct of the contemnors that has severely affected the interest of the Petitioner. No third parties can claim a share in the deposit made by a party committing contempt of protective orders passed in favour of the Petitioner. Further, these are monies deposited in contempt proceedings and Section 73 of the Code of Civil Procedure, 1908 is not applicable in these proceedings."

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- A 19. In support of the contention that IHH / NTK be directed to put the funds back in FHL, it was submitted that matter raised following questions:
- B “(i) Whether Fortis Healthcare Limited/ IHH etc. in remitting the sum of approximately INR 4000 crores on 15 January 2019 have violated the status quo order dated 14 December 2018, and thus committed contempt?
- C (ii) Whether INR 4000 crores should be brought back by IHH and deposited with Fortis Healthcare Limited?
- C (iii) Whether the deposit of INR 4000 crores, if directed to be made, could be utilized to honour the undertakings recorded and representations made on various occasions before the Delhi High Court and this Hon’ble Court?
- D The additional questions raised during the hearing on 12 May 2021, and submissions made by Mr. Datar on behalf of the Petitioner are set out below:
- Additional Q. No. 1: Whether the submissions on tort of conspiracy and the theory of attribution were made in the absence of pleadings?**
- E (a) A specific plea regarding conspiracy was made by the Petitioner in para 97 of SMC Volume 26 at page 63. For ready reference, the paragraph is reproduced below:
- F “97. Given the large-scale conspiracy carried out by the banks and financial institutions in tandem with the Respondents, FHL and IHH, Daiichi Sankyo submits that it is only just and proper that FHL be required to make this amount of INR. 4000 crores available for Daiichi Sankyo in respect of the undertaking given by its CEO and Managing Director on 21 June 2017. Daiichi Sankyo further says and submits that until and unless FHL makes available this amount for realization of the decretal sum, FHL/IHH should not be allowed to proceed with the Open Offer or utilize the amount of INR 4000 lying in the escrow account for that purpose. “
- G The award dated 29 April 2016 was against 19 respondents. Repeated assurances I undertakings were given to the Delhi High Court that the total assets were in excess of INR 10,000 crores

and that in any event, a sum of INR 2341.9 crores will always be available to satisfy the award I decretal debt. These undertakings were on behalf of the entire group, including Fortis Healthcare Limited (“FHL”), as has been pointed out in written submissions [SLP Vol 185] and reiterated in these submissions. In I.A. No. 9264 of 2018 was filed by Daiichi on 16 July 2018 in the Delhi High Court to stop the takeover of FHL by IHH. A reply dated 2018 filed by R19 (RHC) inter alia that: “Given the group’s liabilities, including the award “. Thus, the award is equally the liability of FHL, as it is of other group companies of the Singh Brothers.

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(b) The manner in which the shareholding of Fortis Healthcare Holding Private Limited (“FHHPL”) in FHL was reduced from 71.1 % to 0.66% was in complete violation of eight undertakings given to the Delhi High Court and to the Supreme Court and could not have been done without the active knowledge of the banks and IHH.

(c) Apart from specific pleadings, the conspiracy is also revealed from the extensive pleadings in these matters and the role of the following entities:

(i) Banks, which gave large amount of loans to group companies of the Singh Brothers without any scrutiny on end utilization of the loans (this has been explained by Mr. Rakesh Dwivedi, Senior Advocate)

(ii) FHL and IHH Healthcare Berhad, in transferring INR 4000 crores in violation of the status quo order and to frustrate the decree.

(iii) RHT Health Trust, Singapore, in participating in the transaction of receipt of INR 4000 crores from FHL and IHH, being transferred out of India in violation of the status quo order dated 14 December 2018. This was done while Mr. Gurpreet Singh Dhillon (maternal cousin of Singh Brothers) was the signatory and at the helm of the affairs of RHT.

(d) **Theory of attribution:** It is a settled principle that acts of directors, who are in management and control, are deemed to be acts of a company which is a legal entity but has no mind or body to think and act. It is well settled that the acts of the directors in

- A control are attributable as the acts of the company and treated as such. There are extensive pleadings which show that the group companies, including FHHPL and FHL, were under the management and control of the Singh Brothers. Thus, the theory or principle of attribution applies. Undertakings by the Singh Brothers are undertaking of the group companies, including and, in particular, that of FHL.
- Additional Q. No.2: Whether this Hon'ble Court can issue directions in addition to imposing any punishment for contempt?**
- C (a) This Hon'ble Court has the power to punish for contempt under Article 129 of the Constitution of India. Willful breach of an undertaking given to a court is a civil contempt under section 2(b) of the Contempt of Courts Act, 1971. Further, the doing of "any other act whatsoever" which "interferes with or tends to interfere with, or obstructs or tends to obstruct the administration of justice in any other manner" is a criminal contempt under section 2(c)(iii) thereof.
- D (a) The Contempt of Courts Act, 1971 only provides for imposing punishment for contempt of court. But the contempt jurisdiction of this Hon'ble Court enables not only imposition of punishment but granting relief by way of restitution. The judgment of this Hon'ble Court in *Delhi Development Authority v. Skipper Construction*³ makes it amply clear that the court can give appropriate directions for remedying and rectifying the things done in violation of its orders.
- E (b) A reference can also be made to the decisions in *s⁴*, which held that this Hon'ble Court can take cognizance even for violation of orders of the High Court. (This was overruled on another point in *Supreme Court Bar Association v. Union of India*⁵).
- F (c) At stake in the present case is the sanctity and validity of undertakings given to the Delhi High Court and the Supreme Court.

³(2007) 15 SCC 60 I - For text, see SMC Vol 36, P 227-251 on para 24-28.

⁴(1995) 2 scc584, 602-603 (paras 22 and 23).

⁵(1998) 4 SCC 409 - the Supreme Court could not remove an advocate's name from the rolls of the State Bar Council.

If these can be violated with impunity, it will be a serious setback to the rule of law and the image and the prestige of the superior judiciary in India. It is humbly stated that it should be made clear that if an undertaking is violated, particularly in the context of group companies, the High Courts and the Supreme Court have sufficient power under Articles 129 and 215 to pass whatever directions are necessary to ensure that the undertakings are fulfilled.

Additional Q. No. 3: If FHL/ IHH is directed to bring back INR 4000 crores, whether Petitioner will be entitled to recover the award/ decretal amount from these funds?

(a) In the answer to Question No.2 of the earlier written submissions [SLP Vol 185/Page 9], submissions have been made as to why it is imperative that INR 4000 crores should be brought back. The extraordinary and unseemingly haste in sending INR 4000 crores outside India was in breach of the status quo order of this Hon'ble Court dated 14 December 2018. It is well settled that any act in violation of court's order is void and the status quo ante must be restored. [(i) *Satya Brata Biswas v. Kalyan Kumar*⁶ and (ii) *Vidur Impex and Traders Private Ltd. v. Tosh apartments Private Ltd.*⁷].

(b) If the sum of INR 4000 crores is brought back, it will be an asset in the books of accounts of FHL. This will be like any other asset of FHL namely lands, buildings, investments, cash account, cash in bank, etc., and can be attached to fulfill the undertaking given.

(c) As pointed out in detail later in this additional written submission, there were multiple undertakings given by the Singh Brothers and judgment debtors that the award will be binding on the group companies.

(d) The first undertaking in the execution proceedings (on 24 May 2016) was given only to ensure that the listed entities, primarily FHL, Religare, etc. remained unaffected. Further, undertakings were also given to ensure that no prejudice was caused to FHL

⁶(1994) 2 SCC 266 (para 23 and pages 106-117 of SMC Vol 36.

⁷(2012) 8 SCC 384 (para 49. page 118-150 of SMC Vol 36.

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- A which was a flagship company.
- (e) There is no dispute that FHHPL and FHL are part of the group companies on whose behalf the undertakings were given. Thus, even though these two companies are not the judgment debtors in the arbitral award, the obligation to ensure that the award is satisfactorily complied with is upon all these group companies including FHHPL and FHL.
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- (f) At the time of the first undertaking, the Singh brothers held 71.7% ownership directly and indirectly in FHL through FHHPL. They were in control of the management of FHL. The undertakings that were given to prevent of the award, execution has directly enured to the benefit of FHL whose business operations continued without any hindrance.
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- (g) The undertakings given by Singh Brothers are thus binding on FHL as well. These undertakings, given at the time when they had more than 71 % control, would be binding even after their FHL shareholding was reduced. It is submitted that an undertaking given to the court by a person or persons who are majority shareholders, will continue to bind that company even if their shareholding is subsequently reduced to a minority. This is particularly important when such shareholding is reduced in violation of assurances and undertakings to a court.
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- (h) In *Rosnan Sam Boyce v. B.R. Cotton Mills Ltd.*,⁸ it was held that the undertaking given by the person in management and control, will be the undertaking of the company itself. In the same way, the undertaking given by the Singh Brothers would equally bind FHL. The systematic attempt to frustrate the undertaking should not be permitted. In the B.R. Cotton Mills case, it was held that under Article 142, the court could do complete justice and that the undertaking given by the director was an undertaking by the first respondent company would be treated as having committed contempt. In the same way, FHL may be equally bound by the undertaking.
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- (i) Thus, the undertakings I assurance that a sum of INR 2341. 9 crores will always be available for satisfaction of the award amount
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- H ⁸(1990) 2 SCC 636, (para 7, 8, 9 at page 58-60 of SMC Vol 36)

will also be an undertaking on behalf of FHL. Once the A undertakings were given on behalf of the group and was been made amply clear that FHL was the most valuable member of this group/ single economic entity, the undertakings are binding on all the entities on whose behalf the undertaking was given. Daiichi will be entitled to recover the amount by attaching assets of any B of these entities, including FHL as well.

(j) FHL cannot escape liability on the ground that it is a listed entity or that Singh Brothers along with their investment companies had less than 1 % shares of FHL on the date on which INR 4000 crores was sent out. IHH, the new investor in FHL and now in charge of the management of FHL, had full knowledge of the various undertakings given to the High Courts and the Supreme Court. IHH and its directors cannot now escape the liability to honour the understandings / assurances by taking shelter under the concept of separate corporate personality. The assets of FHL are liable to be attached in execution of the award at the present moment as they would be when the Singh brothers were in control and gave the undertakings / assurances. C D

(k) If FHL is permitted to evade liability, then undertakings can be given on behalf of a group of companies and these will be rendered meaningless if a new management takes over or there are new shareholders who have a majority.” E

20. On behalf of Contemnor No.9 – Malvinder Mohan Singh, it was submitted that the transactions in question were entered into in normal course of business and there was no attempt on part of the contemnors to put the assets beyond the reach and control of Daiichi. It was submitted that whatever the Noticees, banks and financial institutions did was pursuant to the transactions entered into well before the assurances / undertakings were given to the High Court and this Court. In his attempt to purge himself of contempt, Contemnor No.9 submitted that certain properties held by his relations and Companies under the control of his group could still be proceeded against. The details of such properties given in the written submissions, were as under: F G

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A	Loan extended by	Loan extended to	Amount (Rs. Crores)	Cumulative amount (Rs. Crores)
1.	Modland Wears Private Limited	Gurinder Singh Dhillon	1.57	223.15
		Gurkirat Singh Dhillon	88.78	
		Gurpreet Singh Dhillon	79.71	
		Nayan Tara Dhillon	0.61	
		Shabnam Dhillon	52.48	
2.	Devera Developers Private Limited	Gurkiran Singh Dhillon	65.47	122.62
		Gurpreet Singh Dhillon	57.16	
3.	Fern Healthcare Private Limited	Gurkirat Singh Dhillon	101.91	292.5
		Gurpreet Singh Dhillon	110.81	
		Sanjay Godhwani	1.92	
		Sunil Godhwani	68.60	
		Prime Trust	4.19	
4.	Best Healthcare Private Limited	Luminous Holdings Pvt. Ltd.	5.07	207.15
		Gurkirat Singh Dhillon	103.37	
		Gurpreet Singh Dhillon	103.78	
5.	Adept Lifespaces Private Limited	Gurkirat Singh Dhillon	85.58	152.88
		Gurpreet Singh Dhillon	67.30	
		Total	998.3	

D 21. It was submitted by Contemnor No.10 – Shivendra Mohan Singh that he was neither involved in the management nor in the negotiations or talks in respect of any of the transactions entered into which was seriously being questioned. According to said Contemnor, it was his brother namely Contemnor No.9, who was completely responsible for all said transactions.

E 22. As the record shows, the bulk of the shareholding held by FHHPL in FHL was pledged with YES Bank Ltd. (YBL) and Axis Bank Ltd. (ABL). Mr. Shyam Divan, learned Senior Advocate advanced submissions on behalf of these two entities and took us through various documents placed on record.

F The preliminary submissions advanced on behalf of YBL were as under:

G “7. The crux of YBL’s case is that 8,97,81,906 FHL shares were encumbered in favour of YBL, by 28.07.2016. Out of the 8,97,81,906 FHL shares, 5,41,35,500 FHL shares were encumbered under various agreements, prior to 30.03.2016. A further 2,65,02,852 FHL shares were encumbered under agreement to pledge dated 30.03 .2016. Thus, prior to the date of the arbitral award (29.04.2016), a total of 8,06,38,352 FHL shares were encumbered in favour of YBL. Subsequently, on 28.07.2016, i.e. after the ‘First

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Assurance' by the Judgment Debtors (before the Hon'ble Delhi High Court in OMP EFA 6 of 2016) and prior to the Second and Third assurance, a further 91,43,554 FHL shares were encumbered under another agreement to pledge. Therefore, by 28.07.2016, 8,97,81,906 FHL shares were encumbered in favour of YBL, prior to the second to fifth assurances given by the JDs before the Hon'ble Delhi High Court. These 8,97,81,906 FHL shares were sold only pursuant to this Hon'ble Court's Order of 15.02.2018.(Pg. 1, Vol 200)

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8.It is pertinent to reiterate that YBL was never a party before the Hon'ble Delhi High Court when the assurances were given by the JDs. Furthermore, YBL was not even a party to the captioned SLP filed against the Order dated 21.06.2017 passed by the Hon'ble Delhi High Court. YBL was also not aware of the contents of the affidavits being filed by the JDs nor was it aware of the nature of the assurances being given by the JDs to the Hon'ble Delhi High Court. (Para 47, Pg. 34, Vol 173)

9. Admittedly, FHHPL is not a judgment debtor qua Daiichi. Further, the Orders of the Hon'ble Delhi High Court and this Hon'ble Court make it clear that there was no injunction qua the shares of FHL held by FHHPL at any time prior to 11.08.2017. There was also no restriction on lending to the JDs or their group companies at any point of time. In fact, even the Hon'ble Delhi High Court vide its judgment dated 15.10.2020 passed in EA No. 615, 625 and 815 in OMP EFA 6 of 2016 (order upheld by this Hon'ble Court) ("15 October 2020 Judgment") has categorically held that there was neither any restriction on lending to the JDs nor was there any injunction qua the JDs assets till 19.02.2018. The Hon'ble Delhi High Court's reasoning was based on the premise that the foreign arbitral award in favour of Daiichi became a decree only on 31.01.2018, after Daiichi's enforcement petition was allowed, in terms of Section 49 of the Arbitration and Conciliation Act, 1996. (Paras 49 to 52, Pg. 37, Vol 173)

10. Further, all allegations of collusion between the JDs and YBL for the purpose of defeating Daiichi's rights are completely incorrect, meritless and baseless, and are unsupported by any evidence. This is also evident from the fact YBL has several recovery proceedings pending against the JDs and the borrowers

- A before various forums for an outstanding amount of INR 532.9 Crore (excluding interest) (as of 22.02.2021). (Paras 43 to 46, Pg. 33, Vol.173)
- B **11.** Moreover, there were contemporaneous public disclosures made by FHL / FHHPL with the stock exchange concerning the Subject Encumbrances, thereby negating the argument that these encumbrances/ pledges were being created in a discreet and collusive manner. Additionally, it also appears that JD Nos. 14 and 19, in their affidavit of unencumbered assets dated 14.03.2017 had mentioned that 5 crore unencumbered shares of FHL held by FHHPL would be kept aside for repayment of debt obligations of the group companies (Para 4, Pg. 254, Vol 2, Pg. 444, 455, Vol 6). Furthermore, admittedly, neither the JDs nor Daiichi had ever informed YBL that there was any restriction on either lending to the JDs or their group companies post 24.05.2016, nor was YBL informed of any injunction existing qua the FHL shares or any other assets of the JDs' or their group companies. Moreover, FHHPL, under the various pledge agreements executed with YBL, also gave a representation that there was no litigation pending qua the FHL shares. (For eg., Clause 4.l(o), Pg. 439, Vol 175) This shows that it was a well-accepted position among the different stakeholders including Daiichi that there was no such injunction / restriction qua the FHL shares, prior to 11.08.2017. (Paras 43 to 46, Pg. 33, Vol 173)
- C **12.** Therefore, there is absolutely no legal basis to nullify YBL's subject loan and security agreements executed between 24.05.2016 and 11.08.2017. Thus, to hold YBL, a bona-fide secured creditor, accountable for certain unilateral assurances given by the JDs to the Hon'ble Delhi High Court, would be a travesty of justice."
- D Similarly, preliminary submissions advanced on behalf of ABL were as under:
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- G “7. The crux of ABL’s case is that 1,36,50,000 FHL shares were encumbered in favour of ABL under various agreements prior to 29.04.2016 (the date of the arbitral award in favour of Daiichi). Further, a total of 2,58,50,000 FHL shares were encumbered in favour of FHL by 15.12.2016 which is even prior to the second (23.01.2017) and third assurances (6.03.2017) given by the IDs
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to the Hon'ble Delhi High Court (Tranches 1 to 9, @Pgs. 1 to 5 A Vol. 197).

8. Contrary to Daiichi's claim, after the third undertaking, the total encumbrance in favour of ABL in fact reduced to 1,83,75,000 FHL shares from previously held 2,58,50,000 shares. Thus, as of 11.08.2017, ABL had in its favour an encumbrance over 1,83,75,000 B FHL shares. These encumbrances were invoked only pursuant to the Supreme Court's Order of 15.02.2018 (Pgs. 9, 10 Vol. 197).

9. It is pertinent to reiterate that ABL was never a party before the Hon'ble Delhi High Court when the assurances were given by the JDs. Furthermore, ABL was not even a party to the captioned SLP filed against the Order dated 21.06.2017 passed by the Hon'ble Delhi High Court. ABL was also not aware of the contents of the affidavits being filed by the JDs nor was it aware of the nature of the assurances being given by the JDs to the Hon'ble Delhi High Court. (Para 43, Pg. 26, Vol 167) C

10. Admittedly, FHHPL is not a judgment debtor qua Daiichi. Further, the Orders of the Hon'ble Delhi High Court and this Hon'ble Court make it clear that there was no injunction qua the shares of FHL held by FHHPL at any time prior to 11.08.2017. There was also no restriction on lending to the JDs or their group companies at any point of time. In fact, even the Hon'ble Delhi High Court vide its judgment dated 15.10.2020 passed in EA No. 615, 625 and 815 in OMP EFA 6 of 2016 (order upheld by this Hon'ble Court) ("15 October 2020 Judgment") has categorically held that there was neither any restriction on lending to the JDs nor was there any injunction qua the JDs' assets till 19.02.2018. The Hon'ble Delhi High Court's reasoning was based on the premise that the foreign arbitral award in favour of Daiichi became a decree only on 31.01.2018, after Daiichi's enforcement petition was allowed, in terms of Section 49 of the Arbitration and Conciliation Act, 1996. (Paras 45 to 48, Pg. 27 to 30, Vol. 167) D

11. Further, all allegations of collusion between the JDs and ABL for the purpose of defeating Daiichi's rights are completely baseless, and are unsupported by any evidence. This is also evident from the fact ABL has several recovery proceedings pending against the JDs and the borrowers before various forums for an outstanding amount. As stated in its compliance affidavit, even today there is E F G H

- A approximately an outstanding amount of INR 624 Crores (approx.) as of 22.02.2021. (Paras 39 to 42, Pg.25, Vol 167)
- 12.** Moreover, there were contemporaneous public disclosures made by FHL / FHHPL with the stock exchange concerning the Subject Encumbrances, thereby negating the argument that these encumbrances were being created in a discreet and collusive manner. Additionally, it also appears that JD Nos. 14 and 19, in their affidavit of unencumbered assets dated 14.03.2017 had mentioned that 5 crore unencumbered shares of FHL held by FHHPL would be kept aside for repayment of debt obligations of the group companies (Para 4, Pg. 254, Vol 2, Pg. 444, 455, Vol 6).
- B Furthermore, admittedly, neither the JDs nor Daiichi had ever informed ABL that there was any restriction on either lending to the JDs or their group companies post 24.05.2016, nor was ABL informed of any injunction existing qua the FHL shares or any other assets of the JDs' or their group companies. This shows that Daiichi was also well aware that that there was no such injunction / restriction qua the FHL shares, prior to 11.08.2017. (Paras 39 to 42, Pg. 25, Vol 167).
- 13.** Therefore, there is absolutely no legal basis to nullify ABL's subject loan and security agreements executed between 24.05.2016 and 11.08.2017. Thus, to hold ABL - a bona-fide secured creditor - accountable for certain unilateral assurances given by the IDs to the Hon'ble Delhi High Court, would be a travesty of justice."
23. Mr. Harish N. Salve, learned Senior Advocate advanced submissions on behalf of the IHH/ NTK. It was submitted that the shareholding held by FHHPL in FHL was not in any way transferred in favour of IHH/ NTK but what was allocated to IHH/ NTK was subscription of fresh shares. The money so put in by way of capital into the company was then utilized by FHL for streamlining its business structure. It was submitted that under an antecedent arrangement, the proprietary interest in the hospitals and diagnostic centres was held by RHT, a trust set up in Singapore and those assets were being utilized by FHL for its business purposes; and in return FHL was paying a huge amount of money by way of lease rentals. The liability to pay these lease rentals was affecting the financial health of FHL considerably and as such a decision was taken by the management to gain a proprietary interest in said assets rather than continue under the lease arrangement.
- H It was for the purpose of acquisition of such proprietary interest that the

amount of Rs.4,666/- crores was transferred by FHL in favour of RHT Trust. These transactions were completely *bona fide* and entered into for the purposes of securing and protecting the business structure and interest of FHL. In the written submissions the concerned events were set out as under:

“**2.** As explained below, the events that took place were as follows:

(a) Daiichi had initiated an arbitration against the Singh Brothers and others in relation to allegations of fraud in the sale of their shares of Ranbaxy Ltd. It is pertinent to note that the present transaction has no connection with that transaction.

(b) Having secured an award in their favour, the Decree Holder then took to enforcing the award in India. In the course of these enforcement proceedings, undertakings were given on behalf of the Singh Brothers to the Hon’ble Delhi High Court that they would not alienate their assets. At some point, the Decree Holder also carried the matter to this Court, and undertakings were also given in this court by the Decree Holder to the same effect.

(c) It appears that in the meantime since there was a fall in the value of the shares of FHL, the banks from whom loans had been obtained against the security of the shares, invoked pre existing pledges. In the petition for leave to appeal filed by the Decree Holder, initially on 11 August 2017, this Hon’ble Court injunctioned the banks from encashing any pledges. This order however came to be modified on 15 February 2018 when this court clarified that the injunction would relate only to pledges created after 11 August 2017.

(d) Upon the modification of the order, the bankers who now became entitled to enforce the pledges took steps to transfer the shares to themselves or their nominees including the sale of the shares, and this caused a drastic fall in the shareholding of the Singh Brothers in FHL.

(e) By March 2018, the shareholding of the Singh Brothers in FHL had dropped to below 1 %. The Singh Brothers also resigned from the Board of Directors of FHL. The new shareholders nominated professional directors and professional management to run the affairs of FHL.

(f) The financial condition of FHL was precarious and that is why the board of FHL decided to induct fresh capital to salvage the company. This was done by a public process inviting bids from

- A interested parties. The highest premium was quoted by IHH Healthcare Berhad (“IHH”) and it is through this process that NTK (100% indirectly owned subsidiary of IHH) came to subscribe to shares issued by FHL.
- (g) This transaction of issuance of shares was consummated by 13 November 2018, i.e., prior to the Stay Order of 14 December 2018. However, as a consequence of the acquisition of shares pursuant to the investment of ₹ 4000 crores (at ₹ 170 per share, with a premium of around 20% above the prevailing market price) which was by way of a preferential allotment under the Share Subscription Agreement dated 13 July 2018 between NTK and FIIL (“Share Subscription Agreement”). [SMC Compilation/Vol.15/ Page 410-4 71] and NTK became obliged to make a public offer to acquire the shares of such of those (it members of the public who would like to exit FHL.
- (h) The consequence of the order of injunction passed on 14 December 2018 is to render this process of acquisition of shares of the members of the public in an Open Offer (as defined below) under a freeze. It is submitted that the injunction is not serving anybody’s purpose and in fact, is contrary to the interests of the public shareholders. The only interest the Decree Holder has in pursuing this course of action is to try to pressurize IHH to pay them their decretal dues, for the reason that the prospects of recovery from the Singh Brothers (who are already in jail for non-payment) appear to be bleak.”
24. In its response to the submissions made on behalf of the Contemnors regarding purging of Contempt, following submissions were made on behalf of Daiichi:
- F **“A. Judgment Debtors**
1. As sought by the contemnor MMS in (and as proposed in) I.A. No.43119 of 2020, this Hon’ble Court may direct a forensic audit of the group companies of MMs and SMS identified in **Vol. 90/ Table A/pages 4 and 5** and the companies and individuals to which loans have been advanced by the judgment debtors and associate companies as set forth in **Vol. 90/Table B/pages 6 and 7**. Extracts from I.A. 43119 of 2020 describing Table ‘A’ and Table ‘B’, are annexed herewith as Annexure “P-1”. The SC may also direct forensic audit of entities (indirectly owned and controlled by MMS and SMS) which are registered outside India.

An illustrative list of such entities is annexed herewith as Annexure A “P-2”.

2. The SC may also direct a forensic audit of all the concerned companies that borrowed from banks and financial institutions (Dion Global Solutions Limited, Ligare Aviation Private Limited, Ligare Voyages Private Limited, Ranchem Private Limited, ANR Securities Private Limited, RHC Holding Private Limited, Oscar Investments Limited, Fortis Healthcare Holding Private Limited (“FHHPL”), RWL Healthworld Limited and Religare Capital Markets International Mauritius Limited) and for which the shares of Fortis Healthcare Limited (“FHL”) owned by FHHPL were pledged from time to time, including where top-ups with respect to the pledges were made, in violation of the orders and undertakings given to the Hon’ble Delhi High Court (“DHC”) and the SC. A list of borrower entities is annexed herewith as Annexure “P-3”.

3. As per MMS and SMS, the following assets are available for sale to purge a part of the contempt:

S. NO.	LOCATION OF LAND/BUILDING & AREA	OWNED BY
LAND		
1.	Land at Ulhasnagar, Dist. Thane, Maharashtra: 35.150 Acre	Green Grass Estates Pvt Ltd.
2.	Land at Ulhasnagar, Dist. Thane, Maharashtra: 31.775 Acre	White Feather Estates Pvt. Ltd.
3.	Land at Badlapur, Maharashtra: 129.560 Acre	Vitoba Realtors Pvt. Ltd.
4.	Land and Building at Asola, Delhi: 5 Bigha 16 Biswas	Bindas Realtors Pvt. Ltd.
5.	Land at Mehsana, Gujarat	RHC Holding Pvt. Ltd.
6.	Land at Mehsana, Gujarat	RHC Holding Pvt. Ltd.
7.	Land [Noida/Ludhiana]- 12,845 Sq Feet- Noida 3578.96 Sq Yard-Ludhiana	Green Biofuels Farms Pvt. Ltd.
8.	Land-Gawalpahari, Gurgaon- 27.57 Acre	Greenline Buildwell Pvt Ltd.
BUILDING		
9.	Flat C-4/5. Ist Floor, Taj Building, Fort, Mumbai	A-1 Book Company Pvt Ltd.

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- A **4.** In addition to the aforesaid land parcels, MMS and SMS have also stated that the following brands/trademarks are available for sale to purge a part of the contempt:

	BRAND/TRADEMARK	OWNER
B	1. Religare	Elive Infotech Private Limited (Group company-owned by the Contemnors)
	2. SRL	Headway Brands Private Limited (group company-owned by the Contemnors)
C	3. Fortis	RHS Healthcare Management Services (group company-owned by the Contemnors)

- D **5.** As per SMS, an amount of US\$ 10.89 million is available with Ligare Voyage (Ireland) Limited. Accordingly, this Hon'ble Court may be pleased to direct the Contemnors deposit this amount, i.e., US\$ 10.89 million held by Ligare Voyages, with this Hon'ble Court [Vol. 88/Page 7,9,33]

TYPE OF ASSET	ENTITY
Cash in Bank [US\$ 10.89 Mn]	Ligare Voyages (Ireland) Limited

- E **6.** The request for the aforesaid sale of lands/properties given by MMS and SMS should be considered favorably by this Hon'ble Court, and a retired judge of this Hon'ble Court may be appointed to undertake this sale process in a time-bound manner.

F **B. Banks**

- G **7.** Banks and financial institution who have created additional pledges or exercised right of top-ups after 24 May 2016 (i.e., the date of the first assurance) have been instrumental in the systematic dilution of the FHL shares owned by FHHPL. The Judgment Debtors have deliberately pledged the shares in relation to (and as collateral for) dubious loans extended to the various group companies of FHL (owned and controlled by the Singh Brothers). Eight banks and financial institutions (Axis Bank, Yes Bank, RBL Bank, ECL Finance Limited, First Abu Dhabi Bank, Indiabulls, Aditya Birla Finance Limited and Lakshmi Vilas Bank) have

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engaged in this reprehensible conduct and, as per the share price as on 11 May 2021, the vale of the shares pledged after 24 May 2016, is approximately and amount of **INR 2859,45,32,748/-** (That is, Indian Rupees Two Thousand Eight Hundred Fifty-Nine Crores Forty-Five Lakhs Thirty-Two Thousand Seven Hundred Forty-Eight Only).

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Banks and financial institution who have created pledges or exercised right of top-ups after 24 May 2016 (i.e., the date of the first undertaking), should be directed to deposit the equivalent amounts with this Hon'ble Court. This Hon'ble Court may also direct that the money being deposited by the banks and financial institution is pursuant to the exercise of its contempt jurisdiction and, therefore, any and all monies if so directed to be deposited to purge the contempt can only be released in favour of Daiichi who has suffered as a result of the contemptuous acts. A table of pledges created (after 24 May 2016) by each bank and the total value is annexed as **Annexure "P-4"**.

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8. DCB Bank, HDFC Limited and Citi Corp Finance (Noticee Nos. 12, 10 and 13 respectively) have not appeared before this Hon'ble Court despite service of the notice on them. This Hon'ble Court should cancel the pledges created by them on the shares of FHL as owned by FHHPL in violation of the court orders and they should be directed to deposit the equivalent amount with the Hon'ble Court. [**Vol.210/Page 82**]

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9. This Hon'ble Court may direct RBL Bank to deposit a sum equivalent to the value of 4,20,000 shares of FHL i.e., approx., **INR 9,88,89,000** (Indian Rupees Nine Crores Eighty-Eight Lakhs Eighty-Nine Thousand Only) which were injuncted from being transferred or sold by order dated 15 April 2021 of the SC.

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10. While Indiabulls sold 12,25,000 shares of FHL in violation of the orders of the SC and has been held guilty for this, it has also sold 9,04,760 shares during the period of 05 September 2018 – 21 September 2018 I gross violation of orders of this Hon'ble Court. Therefore, the SC should direct Indiabulls to deposit an amount of **INR 21,30,25,742** (Indian Rupees Twenty-One Crores Thirty Lakhs Twenty-Five Thousand Seven Hundred and Forty-Two Only), which is an amount equivalent of the value of these shares

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- A (as on 11 May 2021). No separate *suo motu* contempt proceedings are required.
- 11.** Axis Bank still retains 90,00,000 shares of FHL and these shares must be directed to be sold and the monies so realized must be deposited with this Hon'ble Court.
- B **12.** There was an unlawful top-up of shares by banks of:
- (i) 5,00,000 shares by First Abu Dhabi Bank on 31 May 2017 (Approx. value: **INR 11,74,00,000** (Indian Rupees Eleven Crores Seventy-Four Lakhs Only)); and
- C (ii) 1,10,00,000 shares by Axis Bank on 30 November 2016 (Approx. value: **INR 11,77,25,000** (Indian Rupees Eleven Crores Seventy-Seven Lakhs Twenty-Five Thousand Only)).
- D First Abu Dhabi Bank and Axis Bank should therefore be directed to deposit the aforesaid amounts equivalent to the value of the shares which were unlawfully topped-up in blatant violation of orders of the DHC and the SC.
- 13.** This Hon'ble Court may allow Daiichi Sankyo to withdraw INR 17,93,40,000 deposited by Indiabulls on 18 November 2019 in compliance with the directions in the judgment dated 15 November 2019. Daiichi has filed I.A. No.50764 of 2019 seeking withdrawal of these monies. [*Vol.91*]
- C. Fortis Healthcare Limited**
- F **14.** By their undertaking as recorded in DHC's order dated 21 June 2017, Respondents/Judgment Debtors had assured that a sum of **INR 2341.90 crores** will always be available and realizable to satisfy the Award dated 29 April 2016. At this juncture, the Singh Brothers were the Chairman and the Managing Director of FHL.
- G **15.** Daiichi Sankyo has the right to recover the amount of INR 2341.90 crores from FHL because FHL is also subject to and bound by the undertakings given from time to time by the Singh Brothers. By the theory of attribution, the undertakings/representations/assurances made from time to time are as if they have been (and, indeed, should be deemed to have been made by FHHPL and FHL, both of whom (although there are not judgment
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debtors) form part of the Fortis Group. It is submitted that FHL is as bound by the assurances/undertakings given eight times because, *inter alia*, the Singh brothers were the directing mind and will of FHL. A

16. FHL and IHH have violated the order dated 14 December 2020 of this Hon'ble Court by transferring an amount of INR 4000 crores (that is, Indian Rupees Four Thousand Crores) outside India to RHT Trust, Singapore. This amount should be brought back and deposited with this Hon'ble Court. This Hon'ble Court has initiated *suo moto* contempt action against FHL in this regard. FHL, IHH and NTK must be directed to deposit this amount with this Hon'ble Court. B
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D. RHT Trust

17. Notice of contempt to be issued to RHT Trust and its following officials; E

- (i) Tank Kang Fun-CEO/CFO-Trustee Manager; and D
- (ii) Gurpreet Singh Dhillon – former CEO and Executive Director of the RHT Trust and a close relative of the Singh Brothers.

This Hon'ble Court may direct RHT Trust and Gurpreet Singh Dhillon to explain their roles in: E

- (i) the transfer of INR 4000 crores by FHL to RHT Trust in breach of the order dated 14 December 2018 of the SC: F
- (ii) the further transfer of the monies to RHT's unitholders (including directly/indirectly members of the Dhillon family and the Singh Brothers) which was also in violation of the order dated 14 December 2018. This transfer involved a further transfer of INR 817 crores to FHL (as a unitholder); and
- (iii) the execution of definitive agreement dated 13 February 2018 between FHL and RHT for the buy-back of RHT portfolio assets based on the term sheet dated 14 November 2017 and disclosure to the SGX dated 15 November 2017 that resulted in the transfer of a controlling stake in FHL to IHH. This was in breach of the assurances given to the DHC and the *status quo* order of this Hon'ble Court. G
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E. Religare

1. Any IBC proceeding should be subject to the outcome of the contempt proceedings and orders passed by this Hon'ble Court.

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2. No IBC proceeding should be admitted against the judgment debtors, Fern Healthcare Private Limited, Modland Wears Private Limited and ANR Securities Private Limited.

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3. This Hon'ble Court may reserve the right of Daiichi Sankyo to raise all the arguments raised before this Hon'ble Court and the NCLT may be directed to examine all arguments without prejudice to any arguments under Section 65 of the IBC.

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4. The proceedings against 23 entities initiated by Religare Finvest Limited, if permitted, will directly impact the outcome of the contempt proceedings.”

25. In the backdrop of these submissions, following questions arise for our consideration: -

(a) Whether the acts of commission or omission on part of Contemnor Nos.9 and 10 and the entities controlled by them, were calculated to put the assets of the companies under their control beyond the reach of Daiichi?

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(b) Having given clear assurances to the High Court and this Court, whether such acts of commission and omission on part of Contemnor Nos.9 and 10 amount to contempt of the orders passed by the High Court and this Court?

(c) Whether the banks and financial institutionssold the shares which were pledged with them, purely as a matter of commercial expediency or whether there was any deliberate act of defiance to defeat the rigour and width of the orders passed by the High Court and this Court?

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(d) Whether the acts committed by them were in connivance with Contemnor Nos.9 and 10?

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(e) Whether the transactions entered into by or with IHH/ NTK were *bona fide* or whether there was a deliberate attempt to defeat the processes of Court and thereby keep the assets beyond the reach of Daiichi?

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26. The first two questions raised hereinabove need no further elaboration as the conduct of contemnor Nos.9 and 10 was considered and they were held guilty of having committed contempt of the orders passed by the High Court and this Court. While holding them guilty, by its judgment and order dated 15.11.2019 this Court had given them an opportunity to purge themselves of contempt. Therefore, insofar as the role played by Contemnor Nos.9 and 10 is concerned, the matter rests in a narrow compass i.e., whether they have purged themselves of contempt or not? The kind of assets that have been offered by said Contemnor Nos.9 and 10 in their affidavit are so inadequate that it is impossible to satisfy the amount awarded in favour of Daiichi in the foreign arbitral award. We are, thus, left with no alternative but to hold that said Contemnor Nos.9 and 10 have failed to purge themselves of contempt. As a matter of fact, there is no genuine attempt on their part. The question then comes up is about the quantum of sentence. Considering the enormity of their actions, in our view, the maximum sentence that can be awarded, must be imposed. We, therefore, sentence them to suffer six months imprisonment and impose fine of Rs.5,000/- for having committed contempt of court with default sentence of two months.

27. That takes us to the next set of questions regarding the role played by the noticee banks and financial institutions. With the assistance of the learned counsel appearing for the parties we made an attempt to go through the documents placed on record but find ourselves unable to come to a definite conclusion whether there were antecedent arrangements which enabled said banks and financial institutions to keep attaching the shares and keep on converting large quantity of shares from the compartment of “unencumbered shares” to that of “encumbered shares” and thereafter keep disposing of said shares. We are also unable to come to a clear conclusion whether all those actions were protected by the order dated 15.02.2018 passed by this Court enabling the banks and financial institutions to sell encumbered shares.

This exercise will require going into issues of fact, comparing of the documents and accounts as well as considering the expediency whether the shares were required to be sold in order to keep affording comfort and sufficient security to said banks and financial institutions.

28. It is true that it is possible for a court, while exercising jurisdiction in contempt, to pass consequential orders in the nature of sequestration orders to secure the properties which the contemnor had

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- A put beyond the reach of the court or which were acquired by the contemnor for himself or for any other person or entity by his wrongful acts. But there are two difficulties to undertake such exercise in contempt jurisdiction in the present matter. First, these noticees were not parties to the initial proceedings in this Court. Secondly, they have come up with
- B a defence that all their acts were purely commercial in nature and it was the expediency of the situation which demanded such actions on their part. These issues need to be gone into at the appropriate stage(s). But before reacting that level, a factual analysis in the form of forensic auditas suggested by Daiichi is also required to be undertaken. Such exercise will certainly help the court in arriving at an appropriate conclusion and
- C in passing appropriate orders or directions. We, therefore, refrain from passing any directions against said banks and financial institutions for the present but observe that the executing court or any other authority competent to exercise such power shall do well to appoint forensic auditor(s) to undertake proper exercise to unravel the truth.
- D 29. Insofar as the issues concerning the acquisition of proprietary interests in hospitals and diagnostics centers at a price of Rs.4,666 crores by FHL is concerned, facts on record are not quite adequate to enter into such arena. *Prima facie*, it appears to be acquisition of proprietary interest to subserve the business structure of FHL as suggested by IHH/ NTK. But again, that is a matter to be enquired into and facts to be assessed in the light of any forensic analysis, if the court so deems appropriate.
- E 30. In the premises we pass following directions:
 - (a) Contemnor Nos.9 and 10 are sentenced to suffer six months imprisonment and pay fine in the sum of Rs.5,000/- each within four weeks from today. In case of default of payment of fine, the contemnors shall undergo further imprisonment of two months.
 - (b) Special Leave Petition (Civil) No.20417 of 2019, Contempt Petition No.2120 of 2018 in SLP(C) No.20417 of 2019 and *Suo Motu* Contempt Petition (C) No.4 of 2019 are disposed of with a direction to the High Court, before whom the proceedings in execution are pending, to consider appointment of forensic auditor(s) to analyse the transactions entered into by the noticee banks and financial institutions and to look into whether such transactions were *bona fide* and entered into in commercial expediency.

- (c) The executing court may also consider issuing appropriate process and appointing forensic auditor(s) to analyse the transactions entered into between FHL and RHT and other related transactions. A
- (d) The amount of Rs.17,93,40,000/- which stands deposited in the Registry of this Court shall be transmitted to the executing court along with interest accrued thereon. The said amount shall be available to the executing court while considering execution of the instant foreign arbitral award. B
- (e) Certain shares which are still lying with the noticee banks and financial institutions, for example, the shares of FHL pledged with and continued to be held by RBL Bank which were dealt with in the order dated 15.04.2021 passed by this Court, shall be available to the executing court and shall abide by such order as the executing court may deem appropriate to pass. C
- (f) All the properties offered by Contemnor Nos.9 and 10 in their attempt to partially purge themselves of contempt shall also be available to the executing court and shall abide by such directions as the executing court may deem appropriate to pass. Consequently, there shall be attachment of all those assets which may await the decision or direction to be passed by the executing court in due course of time which may also include the questions whether the assets in question apparently in the names of certain persons/ entities can be proceeded against. D
- (g) Needless to say that it shall be open to the executing court to pass such directions as the facts and circumstances presented before it may justify. E F
- (h) All pending proceedings before the concerned courts, including the First Information Reports and proceedings before NCLT shall be taken to logical conclusion in accordance with law.
- (i) The Registry shall send copies of all volumes, submissions and pleadings filed by the parties in the instant matters to the executing court for facility and record. G