REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL/INHERENT JURISDICTION

WRIT PETITION (CIVIL) NO. 845 OF 2018

RELIANCE COMMUNICATION LIMITED & ORS. …..PETITIONERS

VERSUS

STATE BANK OF INDIA & ORS. …..RESPONDENTS

WITH

CONTEMPT PETN. (C) NO. 1838 OF 2018 IN W.P. (C) NO. 845 OF 2018

CONTEMPT PETN. (C) NO. 55 OF 2019 IN W.P. (C) NO. 845 OF 2018

AND

CONTEMPT PETN. (C) NO. 185 OF 2019 IN W.P. (C) NO. 845 OF 2018

J U D G M E N T

R.F. Nariman, J.

1. Three contempt petitions are before us, having been filed by Ericsson India Pvt. Ltd. ["**Ericsson**"] against Reliance Communications Ltd. ["**RCom**"], Reliance Telecom Ltd. ["**RTL**"], and Reliance Infratel Ltd. ["**RITL**"] [hereinafter, collectively referred to as the "**Reliance Companies**" or "**Companies**"].

2. The brief facts necessary to appreciate these matters are as follows:

On 25.01.2013, Ericsson and RCom entered into a Managed Service Agreement whereby Ericsson agreed to provide RCom managed services, i.e., operation, maintenance, and management of RCom's network. Ericsson raised invoices from time to time in consideration of services provided, and on receiving no payment, ultimately issued three notices, each dated 07.05.2017, under the Insolvency and Bankruptcy Code, 2016 ["**Insolvency Code**"] to the three Reliance Companies, calling upon them to pay an amount of INR 9.78 crore. These notices were replied to on 19.05.2017, whereby the three Reliance Companies stated that the performance of Ericsson had

been inconsistent. After this date, discussions took place between the parties, and an understanding was reached for making payment of the outstanding invoices. However, even this understanding fell through, and on 07.09.2017, Ericsson issued a letter to the three Reliance Companies, terminating the agreement between them, and calling upon them to pay the outstanding amount in full. At this stage, on 08.09.2017, Ericsson filed three applications under Section 9 of the Code as operational creditors. On 15.05.2018, the National Company Law Tribunal ["**NCLT**"] admitted the aforesaid petitions and appointed three Interim Resolution Professionals on 18.05.2018 to carry out the corporate insolvency resolution process. At this stage, appeals were filed against the NCLT order. The National Company Law Appellate Tribunal ["**NCLAT**"], by order dated 30.05.2018, stayed the orders dated 15.05.2018 and 18.05.2018 passed by the NCLT, and recorded the statement of counsel appearing on behalf of the Reliance Companies that the matter had been agreed to be settled for a sum of INR 550 crore, which would be paid within 120 days' time. The order recorded that both the Reliance Companies as well as Ericsson were to file respective affidavits of undertaking in terms of the statements made before the NCLT. These undertakings were so filed in June,

2018. At this stage, the three Reliance Companies filed a writ petition in this Court on 17.07.2018 in which they asked for quashing/closure of the corporate insolvency resolution process in view of settlement of disputes between them and Ericsson. In this writ petition, by an order dated 03.08.2018, this Court heard learned counsel who appeared on behalf of RCom and its group companies, and recorded that the timeline of 120 days shall be strictly adhered to and payment of INR 550 crore is to be made on or before 30.09.2018. Undertakings to this effect were to be filed before this Court by Chairmen of the Companies concerned. The undertakings that were given by the Chairmen of these Companies, pursuant to this order, were dated 09.08.2018 and are a serious bone of contention between the parties in that these undertakings stated that the sum of INR 550 crore will be paid "upon sale of assets of the company". This being the case, a contempt petition, being Contempt Petition No. 1838 of 2018 ["**first contempt petition**"], dated 01.10.2018, was moved by Ericsson, in which it was expressly stated that the undertakings were not in terms of this Court's order and that the Companies aforestated have no intention of abiding by their commitment to pay the necessary sum of money within the time stated. Meanwhile, on 27.09.2018, the Reliance Companies

applied for extension of time for payment by 60 days, expressly stating that since sale of other spectrum had not reached a stage of completion, in order to enable the Companies to make payments, they would require this extension. Both the application for extension and the contempt petition came up for hearing before this Court on 23.10.2018, and it was made clear, as a last opportunity, that the aforesaid amount must be paid on or before 15.12.2018, and that interest at the rate of 12% per annum would also have to be paid for delayed payment beyond 30.09.2018. It was also made clear that the petition for contempt may be revived if payment is not so made by this date. A second application to extend time was moved on 12.12.2018, citing the same excuse of other spectrum not yet being saleable. This time, extension of time was asked for making the payment within two weeks from the date on which a No-Objection Certificate ["**NOC**"] is given by the Department of Telecommunications ["**DoT**"] for sale of other spectrum. On 13.12.2018, this Court made it clear that it was not inclined to grant any such extension, as a result of which, the second application for extension of time was dismissed as withdrawn. While matters stood thus, a letter dated 21.01.2019 was written by the advocates of the three Reliance Companies, who stated that on

09.01.2019, INR 118 crore had already been deposited with the Registry of this Court, and that the total outstanding, as on date, together with interest, would be roughly INR 570 crore. This letter specifically states that the net figure of INR 453 crore would be paid by 31.01.2019, conditional upon withdrawal of the two contempt petitions (a second contempt petition, being Contempt Petition No. 55 of 2019, was also filed on 02.01.2019) and upon withdrawal of pending arbitration proceedings. This was replied to by the advocates of Ericsson, stating that an appropriate application may be moved in the Supreme Court, as once notice of contempt is issued, the Court alone can pass necessary orders to effectuate the settlement. However, on 01.02.2019, the RCom group wrote to various stock exchanges, making it clear that they will now not resist the corporate insolvency resolution process that had hitherto been stayed. This led to the filing of a third contempt petition, namely, Contempt Petition No. 185 of 2019, in which, various prayers were asked for, including issuance of a notice of contempt against the Chairman of the State Bank of India ["**SBI**"], who headed the Joint Lenders' Forum comprising of 46 financial creditors of the RCom group.

3. Shri Dushyant Dave, learned Senior Advocate appearing on behalf of Ericsson, painstakingly took us through the NCLAT order dated 30.05.2018 as well as our orders. According to the learned Senior Advocate, the administration of justice has been sought to be interfered with by the Reliance Companies in two ways. First and foremost, the payment of INR 550 crore to his client was not conditional upon sale of spectrum as is clear from all the orders passed. In fact, this was the understanding of the NCLAT order dated 30.05.2018 by the Reliance Companies, as was clear from the undertakings that were filed by their Directors pursuant to this order. However, mischievously, the undertakings filed pursuant to this Court's order dated 03.08.2018 brought in this condition for the first time, and was directly contrary to this Court's order dated 03.08.2018. He argued that this was the occasion for moving the first contempt petition on 01.10.2018 in which this was pointed out. He also argued that the reply made to the contempt petition, together with the correspondence between the parties, would show that no *bona fide* efforts were made to pay this sum of INR 550 crore at any stage, and that the plea that the Companies were unable to pay is clearly belied by their own advocates' letter dated 21.01.2019, in which it was stated that full

payment would be made within a period of 10 days. He, therefore, argued that both on account of furnishing false undertakings to this Court as well as wilfully breaching the said undertakings and this Court's orders, the administration of justice has been sought to be interfered with. He cited judgments in order to buttress these contentions.

4. On the other hand, Shri Mukul Rohatgi and Shri Kapil Sibal, learned Senior Advocates appearing on behalf of RCom, and RITL and RTL, respectively, have argued that at best, if the settled amount of INR 550 crore, in the place of INR 1500 crore, was not paid to Ericsson, the corporate insolvency resolution process, which was stalled, would begin afresh, and Ericsson would then stand in line as an operational creditor to claim the entire sum of INR 1500 crore. In any case, it is also obvious from the NCLAT order dated 30.05.2018, which was referred to by the orders of this Court, that the sum of INR 550 crore was to be paid from the sale of assets of the corporate debtor, which is part and parcel of the order dated 30.05.2018. The undertakings given by the Chairmen of the three Reliance Companies, dated 09.08.2018, are therefore, in accordance with the NCLAT order as well as the order of this Court dated 03.08.2018. They further

argued that, in any case, even if such undertakings were not in accordance with these orders, no complaint was ever made by Ericsson, which went along with the undertakings. They also argued that, throughout, the three Reliance Companies did their best to pay INR 550 crore, as is clear from the correspondence between the parties and their conduct. Also, as recently as 07.01.2019, the moment they got income tax refunds amounting to INR 118 crore, this sum was deposited in the Registry of this Court, in compliance of this Court's orders. Therefore, according to them, there was no breach of undertakings, nor has there been any wilful default. Despite their best efforts, the DoT insisted on adhering to certain guidelines, as a result of which, it did not give its NOC for sale of spectrum, and therefore, it had now become impossible for the three Reliance Companies to pay the aforesaid amount. The very fact that they have now succumbed to the corporate insolvency resolution process going forward would show their *bona fides*. In any case, they stated that they are still ready and willing to pay whatever they can, by way of income tax refunds. Another sum of INR 129 crore has now come by way of income tax refunds, which can be further adjusted. Also, an extremely recent refund order of INR 134 crore can also be used in part payment of the

sum of INR 550 crore. Thus, a total sum of INR 391 crore, out of INR 550 crore, can, in fact, be paid as of today. All this would show that they are doing their best to make this payment, and therefore, cannot be characterized as wilful defaulters. They also made a fervent prayer that the special leave petition and the writ petition should be dismissed as withdrawn, as the inevitable has now occurred, and the corporate insolvency resolution process has to now go forward. They also cited various judgments to buttress their submissions.

5. Shri Neeraj Kishan Kaul, learned Senior Advocate appearing on behalf of the Chairman, SBI, has argued that the Joint Lenders' Forum, being allowed to sell assets outside of the corporate insolvency resolution process has nothing to do with the Ericsson transaction. According to him, prayers (c) and (j) of the Contempt Petition No. 185 of 2019 are not reliefs that can be given in a contempt petition. Also, it is wholly unnecessary to file an affidavit stating the total amount received from sale of assets of the corporate debtors post the settlement dated 30.05.2018. Equally, prayer (j), asking for a direction for SBI to bring in amounts due and payable so as to purge itself of contempt does not lie against the Joint Lenders' Forum in view of the

fact that the Ericsson transaction is wholly independent of sale of assets.

6. Since everything turns on the order of NCLAT dated 30.05.2018, and the three orders of this Court, these orders are set out hereunder:

The order of the NCLAT, dated 30.05.2018, states:

> "These appeals have been preferred by the Appellants-Directors and Shareholders of 'Reliance Infratel Ltd.'; 'Reliance Telecom Ltd.' and 'Reliance Communications Ltd.' against the common orders dated 15th May, 2018 and 18th May, 2018, passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, whereby and whereunder, the application(s) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") preferred by the Respondent- 'Ericsson India Pvt. Ltd.'- ('Operational Creditor') have been admitted, order of 'Moratorium' has been passed and 'Insolvency Resolution Professional' has been appointed.
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> Apart from the ground that an arbitration proceeding is pending and the Hon'ble Supreme Court has passed an order, some other grounds have also been taken to assail the impugned orders.
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> 2. The 'Financial Creditors'- 'Joint Lenders Forum', some other Banks and 'Ericsson India Pvt. Ltd.'- ('Operational Creditor') have appeared. It is informed that interests of a number of Banks are involved who are awaiting the decision of this Appellate Tribunal as they intend to recover the amount.
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> 3. Mr. Tushar Mehta, learned Senior Counsel for the 'Joint Lenders Forum'- ('Financial Creditors')

submitted that they have reached an agreement with the 'Corporate Debtors' for sale of assets of the 'Corporate Debtors', pursuant to which, the 'Financial Creditors' can recover a sum of Rs. 18,100 crores approximately. He further submits that on re-structuring and sale of assets, the 'Financial Creditors' can recover Rs. 37,000 Crores approximately.

4. According to them, in view of the impugned order, the Bank is not in a position to recover the amount and there is recurring loss of more than crores per day.

5. Mr. Rajeeve Mehra, learned Senior Counsel appearing on behalf of the 'Standard Chartered Bank' has also taken similar plea and supported the stand taken by the learned Senior Counsel for the 'Joint Lenders Forum'.

6. Mr. Kapil Sibal, learned Senior Counsel appearing on behalf of the Appellants submitted that if the impugned order is stayed and/or set aside, the parties may settle the matter.

7. The case was taken up yesterday (29th May, 2018) and on the request of the parties, the case was adjourned to find out whether the Appellants and the 'Operational Creditors' can settle the matter.

8. Mr. Salman Khursid, Mr. Arun Kathpalia and Mr. Anil Kher, learned Senior Counsel appear on behalf of the 'Operational Creditors' in the respective cases. They submitted that the Respondent- 'Ericsson India Pvt. Ltd.'- ('Operational Creditor') has agreed to settle the matter if affront payment of Rs. 600 Crores (Rupees Six hundred Crores Only) is made by the Appellants/'Corporate Debtors'.

9. Mr. Kapil Sibal, learned Senior Counsel for the Appellants informed that the Appellants have agreed to pay a sum of Rs. 550 Crores (Rupees five hundred fifty Crores only) (jointly) in favor of

'Ericsson India Pvt. Ltd.'- ('Operational Creditor') and sought for 120 days' time to pay the total amount.

10. Learned Senior Counsel appearing on behalf of 'Ericsson India Private Limited'- ('Operational Creditor'), on instructions from the Respondent, informed that the 1st Respondent has agreed to receive a sum of Rs. 550 Crores (Rupees Five hundred fifty Crores only), if the total amount is paid within 120 days as proposed by the learned Senior Counsel for the Appellants.

11. Taking into consideration the stand taken by the parties and the fact that if the 'Corporate Insolvency Resolution Process' is allowed to continue, all the 'Financial Creditors' as also the 'Operational Creditors' may suffer more loss and the Appellants have made out a prima facie case, as agreed and suggested by learned Senior Counsel for the Appellants and learned Senior Counsel for the 'Joint Lenders Forum' and the learned Senior Counsel for the 'Operational Creditor'- 'Ericsson India Pvt. Ltd.', we pass the following orders:

> i. Until further orders, the impugned orders dated 15th May, 2018 and 18th May, 2018, passed by the Adjudicating Authority, Mumbai Bench in C.P. (IB) 1385, 1386 & 1387 (MB)/2017, shall remain stayed. The 'Resolution Professional' will allow the managements of the 'Corporate Debtors' to function. He may attend the office of the 'Corporate Debtors' till further order is passed by this Appellate Tribunal. Thereby, the 'Corporate Insolvency Resolution Process' initiated against the 'Corporate Debtors' namely— 'Reliance Infratel Ltd.'; 'Reliance Telecom Ltd.' and 'Reliance Communications Ltd.' shall remain stayed, until further orders.

ii. The ‘Financial Creditors’/’Joint Lenders Forum’ with whom the assets of the ‘Corporate Debtors’ have been mortgaged as also the ‘Corporate Debtors’ are given liberty to sell the assets of the ‘Corporate Debtors’ and to deposit the total amount in the account of the lead Bank of Joint Lenders Forum which shall be subject to the decision of these appeals. If the appeals are rejected, in such case, the ‘Financial Creditors’/’Joint Lenders Forum’ and other Banks with whom the amount is deposited, will have to return the total amount in the respective accounts of the ‘Corporate Debtors’.

iii. The Chairman, Managing Directors, Directors and other members of the ‘Corporate Debtors’ namely— ‘Reliance Infratel Ltd.’; ‘Reliance Telecom Ltd.’ and ‘Reliance Communications Ltd.’ are directed to pay a sum of Rs. 550 Crores (Rupees Five Hundred Fifty Crores Only) (jointly) in favour of ‘Ericsson India Pvt. Ltd.’ within 120 days i.e. by 30th September, 2018. In case of non-payment of the amount and part of the same, the concerned appeal(s) may be dismissed and this Appellate Tribunal may direct to complete the ‘Corporate Insolvency Resolution Process’ and may pass appropriate order. The payment of Rs. 550 Crores (Rupees Five Hundred Fifty Crores Only) in favour of the ‘Operational Creditor’ shall be subject to the decision of these appeals. If the appeals are dismissed, the ‘Operational Creditor’ will pay back the amount to the ‘Corporate Debtors’.

12. The Appellants and the ‘Operational Creditors’ are directed to file their respective

affidavits of undertaking in terms of their statement as made and recorded above within 10 days.

Let the appeals be listed 'for admission' on 3rd October, 2018.

13. In the meantime, it will be open to the parties to file Interlocutory Application if orders and directions given above are not complied. Interlocutory Application Nos. 701-702, 709-710 and 712-713 of 2018 stand disposed of with aforesaid observations and directions.

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The order of the Supreme Court, dated 03.08.2018, states:

"Applications seeking exemption from filing certified copy of the impugned orders are allowed.

Permission to file Appeals is granted.

Applications for impleadment are allowed.

Reading the interim Order dated 30.05.2018 of the National Company Law Appellate Tribunal, it is clear that Ericsson India Pvt. Ltd., who is an Operational Creditor, is willing to settle its debt of over Rs. 1500 Crores for a sum of Rs. 550 Crores (Rupees Five Hundred Fifty Crores only) which is to be paid within 120 days from the date of that order i.e. by 30th September, 2018.

Having heard Mr. P. Chidambaram, learned Senior Counsel for Neptune Steel Strips Ltd. and Mahima Mercantile Credits Ltd., Mr. Kapil Sibal, learned Senior Counsel for Reliance Communications Limited & Ors. and Mr. Tushar Mehta, learned ASG for Joint Lenders Forum/SBI, we are of the view that this time-line shall be strictly adhered to and payment of Rs. 550 Crores (Rupees Five Hundred Fifty Crores only) be made on or before 30th September, 2018.

In the meanwhile, the undertaking that is to be given by the Chairman of the Company concerned shall be given within a period of one week from today.

Mr. Tushar Mehta, learned ASG appearing for the Joint Lenders Forum agrees to this. Mr. Dushyant Dave, learned Senior Counsel for Ericsson India Pvt. Ltd. also agrees to it.

In this view of the matter, list on Monday, the 1st October, 2018.

Needless to say, the sale of the assets concerned will go through as has been stated in the orders of the Tribunal and Appellate Tribunal.

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The order of the Supreme Court, dated 23.10.2018, states:

"I.A. No. 141871/2018:

The applicants in this I.A. state that - thanks to a situation which is beyond their control - they have not been able to make the requisite payment on or before 30.09.2018 in accordance with the undertaking given to this Court.

At the request of Mr. Kapil Sibal, as a last opportunity, we make it clear that the amount that is to be paid to Mr. Dave's client shall be paid on or before 15.12.2018. We also make it clear that interest shall begin ticking on this amount at the rate of 12% p.a. for delayed payment beyond 30.09.2018.

We make it clear that no time beyond 15.12.2018, in any case, will be given. We also make it clear that Mr. Dave may revive his I.A. for contempt, if payment is not made.

I.A. stands disposed of accordingly.

C.A. Nos. 9337-9338/2018:

The Civil Appeals are dismissed in terms of the signed order.

Pending applications, if any, stand disposed of.

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The order of the Supreme Court, dated 13.12.2018, states:

"IA No. 180453/2018 in W.P. (C.) No. 845/2018 is dismissed as withdrawn.

List the matters on Friday, the 14th December, 2018.

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7. A perusal of the NCLAT order dated 30.05.2018 would show that the financial creditors'/Joint Lenders' Forum stated that they have reached an agreement with the corporate debtors for the sale of assets of the corporate debtors, pursuant to which they can recover a sum of INR 18,100 crore. Also, from restructuring and sale of further assets, a further sum of INR 37,000 crore could be recovered, which would then suffice to pay off the entire debt of the secured creditors. This order also recorded that Ericsson had agreed to settle the debt in its favour (which amounted to roughly INR 1500 crore) for the sum of INR 550 crore within a period of 120 days. As a result of this, the erstwhile management continued in the saddle; the corporate insolvency resolution process was stayed until further orders; the financial

creditors'/Joint Lenders' Forum was given liberty to sell assets of the corporate debtors and to deposit the amount so received in an account of the lead bank, i.e., SBI; and the sum of INR 550 crore was directed to be paid by 30.09.2018. It was made clear that in case of non-payment, the concerned appeals may be dismissed, and the NCLAT may direct the completion of the corporate insolvency resolution process. In any case, the amount so deposited with the financial creditors'/Joint Lenders' Forum would be subject to the decision of these appeals, and that if the appeals are dismissed, the financial creditors'/Joint Lenders' Forum will pay back this amount to the corporate debtors. Most importantly, the corporate debtors and creditors were directed to file their respective affidavits of undertaking in terms of the statements recorded.

8. At this stage, it is important to set out one sample undertaking that has been filed on behalf of one of the Reliance Companies, i.e., by the Director of RITL. This affidavit of undertaking reads as follows:

"**BEFORE THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

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AFFIDAVIT OF UNDERTAKING OF THE APPELLANTS

I, Suresh Madihally Rangchar, S/o Sh. Rangachar M. Raghavachar, aged about 54 years, R/o Imperial Tower, Flat No. 3604, 36th Floor, South Wing, BB Nakashe Marg, Tardeo, Mumbai – 400 036, do hereby solemnly affirm and state as under:

1) That I am the Appellant and the Director of the Reliance Infratel Ltd. in the above said matter and as such I am well acquainted with all the facts and circumstances of the case and am fully competent to swear this affidavit for the Reliance Infratel Ltd.

2) That I am giving this affidavit cum undertaking on behalf of the Reliance Infratel Ltd. pursuant to the order of this Hon'ble Tribunal dated 30.05.2018.

3) That the Reliance Infratel Ltd. alongwith Reliance Communications Ltd. and Reliance Telecom Ltd. and their respective directors shall jointly pay a sum of Rs.550 Crores (Rupees Five Hundred Fifty Crores Only) to Ericsson India Pvt. Ltd. (Operational Creditors) within a period of 120 days i.e. by 30th September, 2018.

xxx xxx xxx"

This undertaking makes it clear that the understanding of the three Reliance Companies with regard to the NCLAT order dated 30.05.2018 was that a sum of INR 550 crore will be paid by 30.09.2018 without there being any linkage to sale of assets, as separately stated in the order. Even otherwise, reading the order as a whole, it is clear that

whereas INR 550 crore had to be paid within 120 days, sale of assets could take place at any time in the future without any time limit being mentioned. This being the case, it is futile to contend that this order itself made it clear that the sum of INR 550 crore was to be obtained only from sale of assets. Both the undertakings as well as a plain reading of the NCLAT order, militate against any such linkage.

9. On 03.08.2018, the writ petition that was filed before this Court was taken up. It is important to note that this writ petition expressly states that this Court was approached so that it could pass orders under Article 142 of the Constitution of India to quash/close the corporate insolvency resolution process, which no other court or tribunal could do. This was done on the footing that the parties have "fully, mutually, and finally settled all the disputes between them" as has been noted in the NCLAT order dated 30.05.2018. When this writ petition came up for hearing, the order dated 03.08.2018 clearly records that the payment of INR 550 crore will be made on or before 30.09.2018, and an undertaking was to be given by the Chairmen of the Reliance Companies to that effect. The order separately noted that the sale of assets will continue, as has been stated in the orders of the NCLT and the NCLAT. A reading of this order also leaves no manner

of doubt that the undertakings that were to be given by the Chairmen of the Companies concerned were only that the payment of INR 550 crore was to be made on or before 30.09.2018. There is no doubt whatsoever that there was no linkage with any sale of assets of these Companies.

10. Despite the aforesaid position being clear, on 09.08.2018, the affidavits of undertaking, in pursuance of this Court's order dated 03.08.2018, were given by the Chairmen of the Reliance Companies. A sample undertaking, filed by the Chairman of RCom, reads as follows:

> "**IN THE SUPREME COURT OF INDIA**
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> xxx xxx xxx
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> AFFIDAVIT OF UNDERTAKING/COMPLIANCE
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> I, Anil Dhirubhai Ambani, S/o Late Shri Dhirajlal Dhirubhai Hirachand Ambani, aged about 60 years, residing at 39, 'Sea Wind', Cuffe Parade Colaba, Mumbai – 400005, do hereby solemnly affirm and state on oath as under:
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> 1. That I am the Chairman of the Reliance Communications Limited ("Company"), the holding company of Reliance Telecom Limited and Reliance Infratel Limited, the Petitioners in the above Writ Petition, I am well acquainted with the facts of the case and as such I am competent to swear this affidavit.

2. By order dated 30 May, 2018, the Hon'ble National Company Law Appellate Tribunal ("NCLAT") by way of an interim order recorded settlement between the parties and permitted sale of the assets for repayment to the banks. Pursuant to the said order, the Petitioner gave an Undertaking dated 1st June 2018 before the NCLAT inter alia stating as under:

> *"that the Reliance Infratel Ltd. alongwith Reliance Communications Ltd. and Reliance Telecom Ltd. and their respective Director shall jointly pay a sum of Rs.550 Crores (Rupees Five Hundred Fifty Crores only) to Ericson India Pvt. Ltd. (Operational Creditors) within a period of 120 days i.e. 30th September, 2018."*

3. In the Petitions filed before this Hon'ble Court for orders under Article 142 of the Constitution of India to be able to proceed with the sale and to effectuate the settlement, this Hon'ble Court passed the following order:

> *".....In the meanwhile, the undertaking that is to be given by the Chairman of the Company concerned shall be given within a period of one week from today."*

4. Accordingly, in light of the order of this Hon'ble Court dated 3rd August, 2018, read with the order of the Hon'ble NCLAT dated 30th May, 2018, I hereby undertake that upon the sale of the assets of the Company, the Company and its directors will honour their undertaking extracted above."

Similar undertakings were filed on behalf of the Chairmen of the other two Reliance Companies. A perusal of these undertakings would show that they are contrary to the undertakings given by the authorized persons of these very Companies pursuant to the NCLAT order dated 30.05.2018. We have seen that whereas those undertakings were unconditional, these undertakings are now conditional upon sale of assets of the Companies. These undertakings have obviously not been given in accordance with this Court's order dated 03.08.2018. To further compound this misdemeanor, an application to extend time by 60 days was moved on 27.09.2018, in which the same linkage was made to sale of assets before the sum of INR 550 crore could be paid. Contrary to Shri Rohatgi's argument, Ericsson immediately protested in the form of a contempt petition, being the first contempt petition that was filed on 01.10.2018, in which it was clearly pointed out that the said undertaking would show contumacious behavior coupled with the fact that the Reliance Companies were wriggling out of the commitment made to this Court. When the first contempt petition and the first application for extension of time came up for hearing before this Court, this Court, *vide* order dated 23.10.2018, made it clear that as a matter of indulgence, a last opportunity would be granted to pay

the aforesaid sum on or before 15.12.2018, making it clear that this is conditional upon payment of interest of 12% per annum for delayed payment beyond 30.09.2018. It was also made clear that no further extension would be granted and that Ericsson may revive the petition for contempt if payment is not so made. This order again leads to only one conclusion – that the averment made in the application for extension of time that the sum of INR 550 crore will be paid out of sale of assets was not accepted by this Court, as sale of assets could have taken place even beyond 15.12.2018. This further becomes clear from the fact that the contempt petition would be revived if this payment were not to be made, i.e., it would be open for Ericsson to contend that the undertaking given to this Court was not as per this Court's order, and that there had been wilful and contumacious default on part of the Reliance Companies.

11. When a further application for extension of time was made on the selfsame ground, this Court made it clear by its order dated 13.12.2018 that in view of the order passed on 23.10.2018, no further extension of time could be granted, and revival of the contempt petition would necessarily follow. As a result of this, this I.A. was dismissed as withdrawn on the said date.

12. Meanwhile, in parallel proceedings, this Court did its utmost to lend a helping hand, so that, independently of these orders, sale of assets could also be affected. The DoT was called before this Court and was asked to give its NOC for sale of spectrum. However, it was pointed out that this NOC could only be given according to certain guidelines, one of which mandated that the buyer of the spectrum would have to undertake that it would be responsible for payment of the erstwhile debts of the seller. The sale of spectrum to Reliance Jio, therefore, did not fructify, not because the DoT wrongfully refused to give its NOC, as has been alleged by the Reliance Companies in their pleadings filed in this case. It fell through only because the prospective buyer, Reliance Jio, refused to give the undertaking that if called upon, it would pay the erstwhile debts of the seller of the spectrum.

13. We now come to two other contempt petitions that were filed. Contempt Petition No.55 of 2019 dated 02.01.2019 was filed in view of non-payment of the sum of INR 550 crore on or before 15.12.2018. Contempt Petition No.185 of 2019 dated 05.02.2019 was filed pointing out two subsequent facts. First, that by a letter dated 21.01.2019, the Reliance Companies were willing to pay the entire sum of INR 550 crore with interest if two conditions were met, namely, withdrawal of

contempt petitions and withdrawal of arbitration proceedings. Ericsson replied on 23.01.2019, stating that this could only be done by moving an application before this Court as contempt proceedings were pending. Secondly, this petition points out that, maliciously, instead of moving such appropriate application, from 01.02.2019 onwards, an about-turn was taken, and Ericsson was left in the lurch as a decision was taken by the three Reliance Companies that the corporate insolvency resolution process could be revived.

14. The law of contempt has been recognized in English law at least from the 12th Century A.D. to the present time [*see* The History of Contempt of Court: The Form of Trial and the Mode of Punishment by Sir John C. Fox, at page 1]. It is always important to bear in mind, as was stated in **Attorney-General v. British Broadcasting Corporation**, [1980] 3 All ER 161 [House of Lords], per Lord Salmond, that:

> "The description "contempt of court" no doubt has an [*sic*] historical basis but it is nevertheless most misleading. Its object is not to protect the dignity of the courts or the judges but to protect the administration of justice……."
>
> (at page 170)

In the same judgment, Lord Scarman added:

> "It is high time, I would think, that we re-arranged our law so that the ancient but misleading term "contempt of court" disappeared from the law's vocabulary."
>
> (at page 184)

Another edifying statement, by Lord Diplock in **Attorney-General v. Leveller Magazine Ltd. and Ors.**, [1979] 1 All ER 745 [House of Lords], reads as follows:

> "…… It is justice itself that is flouted by contempt of court, not the individual court or judge who is attempting to administer it.
>
> (at page 749)

15. It is also important to remember that while considering the question of disobedience of an order, what must be regarded is the letter and the spirit of the order, together with the *bona fide* or genuine belief of the alleged contemnor as to such order [*see* **Lakshman Prasad Agarwal v. Syed Mohammad Kareem**, 2009 (6) SCALE 413 at paragraph 5].

16. In **Rosnan Sam Boyce v. B.R. Cotton Mills Ltd.**, (1990) 2 SCC 636, this Court referred to a party who gave an undertaking based on an implication or assumption which was false to its knowledge. This Court held:

> "**9.** …… We are, of course, quite conscious of the fact that the proceedings in the contempt are quasi-criminal in nature, that the law of contempt has to be strictly interpreted and that the requirements of that law must be strictly complied with before any person can be committed for contempt. However, as we have pointed out, respondent 1 gave an undertaking based on an implication or assumption which was false to its knowledge and to the knowledge of respondent 2. Respondent 2 was equally instrumental in the giving of this undertaking. This implication or assumption was made explicit by the clarification given by the learned counsel for respondent 1 as set out earlier. Respondent 2 was equally responsible for instructing counsel to give this clarification which was false to the knowledge of both, respondents 1 and 2. Both respondent 1 and respondent 2 have tried to deceive the court and the appellant. In view of this, we fail to see how it can be said that they are not guilty of contempt.……"

Finally, the Court directed the court receiver to take possession of the suit premises from the tenant/sub-tenant and hand it over to the landlord, as agent, so that the contempt committed be purged.

17. We have seen from the above narration of facts that the undertakings given on 09.08.2018 by the three Chairmen of the three Reliance Companies were neither as per the Court's understanding of its order dated 03.08.2018, nor the understanding of the three Companies themselves, as is clear from the undertakings given by the three Directors pursuant to the order dated 30.05.2018. In this view of

the matter, it is clear that the three Reliance Companies had no intention, at the very least, of adhering to the time limit of 120 days or to the extended time limit of 60 days plus, as was given by way of indulgence, by the order dated 23.10.2018. The undertakings given on the footing that the amount of INR 550 crore would be paid only out of the sale of assets was false to the knowledge of the three Reliance Companies. This itself affects the administration of justice, and is therefore, contempt of court. What is of greater relevance is the fact that, despite the Reliance Companies' continuous protestations to the contrary, the letter dated 21.01.2019 from the advocate for the three Reliance Companies made it clear that the entire payment would be made by 31.01.2019, albeit on fulfilment of two conditions. This letter is of great importance and is set out in entirety hereinbelow:

> "21 January, 2019
> To,
> xxx xxx xxx
>
> **SUB: COMPLETION OF SETTLEMENT**
>
> Dear Sir,
>
> We are concerned for our clients Reliance Communications Limited (RCom), Reliance Infratel Limited (RITL) and Reliance Telecom Limited (RTL,

and collectively with RCom and RITL, the RCom Group), who have instructed us to write to you on behalf of your client Ericsson India Private Limited (Ericsson) as under:

1. The Hon'ble Supreme Court has vide its order dated 3 August, 2018 in Writ Petition (C) No. 845 of 2018, recorded the settlement arrived at between the RCom Group and Ericsson before the Hon'ble National Company Law Appellate Tribunal (NCLAT) on 30 May, 2018, pursuant to which Rs.550 crores was to be paid to Ericsson by 30 September, 2018 as full and final settlement of all dues and claims.

2. Vide its order dated 23 October, 2018, the Hon'ble Supreme Court extended the date for the RCom Group to make payment to Ericsson and directed that interest at 12% p.a. on such amount to be paid from 1 October, 2018. As on 31 January 2019, such interest would amount to Rs.20.016 crores being an amount of Rs.22.24 crores less TDS of Rs. 2.224 crores.

3. Thus, the total net amount payable by the RCom Group to Ericsson on 31 January, 2019 is Rs.570.016 crores.

4. Out of the total settlement payment set out in para 3 above, the RCom Group has deposited an amount of Rs.118 crores with the Registry of the Supreme Court on 9 January, 2019 (Deposited Payment), pursuant to the Hon'ble Supreme Court's order dated 7 January, 2019.

5. The RCom Group will make the balance net settlement payment of Rs.452.016 crores (Balance Settlement Payment) in favour of Ericsson on 31 January, 2019 to complete all their payment obligations to Ericsson.

6. Ericsson is therefore required to:

a. Withdraw Contempt Petition (Civil) Diary No.122/2019 and Contempt Petition (C) No.1838/2018 in W.P.(C) No.845/2018 filed on its behalf, immediately upon receipt of the Balance Settlement Payment and towards the same, prepare and send for our consideration and for us to mutually agree by 29 January, 2019, the draft application to be made to the Hon'ble Supreme Court for withdrawal of the said Contempt Petitions;

b. Withdraw all its claims and contentions as per the Arbitration between RCom and its affiliates, and Ericsson, pending before the Hon'ble Arbitral Tribunal comprising Justice Mr. S.B. Sinha, Justice Mr. Swatanter Kumar, and Justice V.S. Sirpurkar, and towards the same, prepare and sent for our consideration and for us to mutually agree by 29 January 2019, the draft application to be made to the Hon'ble Arbitral Tribunal for withdrawal of all claims and contentions, and the consequent termination of proceedings.

c. Sign and return the attached No Dues Confirmation simultaneous with the Demand Draft for an amount of Rs. 452.016 crores, being handed over to Ericsson on 31 January 2019.

Yours sincerely,

xxx xxx xxx"

18. It may be pointed out that in their reply to the Contempt Petition No.55 of 2019, RCom and its group companies had stated that they were “disabled” from paying the amount of INR 550 crore plus interest; that they “were and are unable to pay”; and finally, that:

> “xxx xxx xxx
>
> 39. The Respondents had submitted the Undertaking on behalf of RCom Group Companies based on the lenders’ consent for monetization of the Other Spectrum for Rs.975 crores and in the genuine hope and bonafide belief that Asset Monetization Scheme would be implemented and Ericsson shall be paid an amount of Rs.550 crores along with interest, however, the same has become impossible to be achieved.
>
> xxx xxx xxx”

19. Obviously, the letter dated 21.01.2019 by the advocates on behalf of the Reliance Companies would belie each of the aforesaid statements made in the said reply affidavit. There is, therefore, no doubt whatsoever that the three Reliance Companies have wilfully not paid the sum of INR 550 crore plus interest and have thus breached the undertakings given to this Court.

20. Another disturbing feature of the reply affidavit filed in this Court by the Chairman of RCom to Contempt Petition No. 55 of 2019 is the statement that RCom has not taken or received any advantage on

account of the undertaking submitted before this Court. This, again, is a wholly incorrect statement, given the fact that a writ petition was filed in this Court seeking quashing of the corporate insolvency resolution process on settlement of the matter with Ericsson, which could not be achieved without such undertaking being given to this Court. We are of the view that any unconditional apology given that there was no intention to make any wrongful undertaking or that the undertaking was submitted *bona fide* must be rejected. It is clear that this reply affidavit clearly demonstrates the cavalier attitude of the deponent of this affidavit to the highest court of the land.

21. However, Shri Rohatgi and Shri Sibal relied upon the following judgments:

(i) **Babu Ram Gupta v. Sudhir Bhasin**, (1980) 3 SCC 47 was a case where an express undertaking to hand over possession to a receiver was not given. In this view of the matter, it was held that it would not be possible to state that the appellant had wilfully disobeyed or committed breach of such undertaking. This case has no application on facts to the present case.

(ii) In **Ashok Paper Kamgar Union v. Dharam Godha**, (2003) 11 SCC 1, this Court held:

> "**17.** Section 2(*b*) of the Contempt of Courts Act defines "civil contempt" and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of undertaking given to a court. "Wilful" means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extraordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance……."

This case again has no application to the facts of this case. We have seen that right from the beginning, the sum of INR 550 crore was undertaken to be paid, without having to depend upon any act or omission of a third party. To say that the sum of INR 550 crore would be paid only out of sale of assets of the three Reliance Companies is a deliberate misstatement made in the undertakings as well as the applications for extension of time filed before this Court, which was done with the purpose of circumventing the orders of this Court. We

are also of the view that in the facts of the present case, wilful default is made out, as has been pointed out in this judgment.

(iii) In **Dinesh Kumar Gupta v. United India Insurance Co. Ltd.**, (2010) 12 SCC 770, this Court held:

> "**23.** Besides this, it would also not be correct to overlook or ignore an important statutory ingredient of contempt of a civil nature given out under Section 2(*b*) of the Contempt of Courts Act, 1971 that the disobedience to the order alleging contempt has to satisfy the test that it is a wilful disobedience to the order. Bearing this important factor in mind, it is relevant to note that a proceeding for civil contempt would not lie if the order alleged to have been disobeyed itself provides scope for reasonable or rational interpretation of an order or circumstance which is the factual position in the instant matter. It would equally not be correct to infer that a party although acting due to misapprehension of the correct legal position and in good faith without any motive to defeat or defy the order of the Court, should be viewed as a serious ground so as to give rise to a contempt proceeding.
>
> **24.** To reinforce the aforesaid legal position further, it would be relevant and appropriate to take into consideration the settled legal position as reflected in the judgment and order delivered in *Ahmed Ali* v. *Supdt., District Jail* [1987 Cri LJ 1845 (Gau)] as also in *B.K. Kar* v. *High Court of Orissa* [AIR 1961 SC 1367 : (1961) 2 Cri LJ 438] that mere unintentional disobedience is not enough to hold anyone guilty of contempt and although disobedience might have been established, absence of wilful disobedience on the part of the contemnor, will not hold him guilty unless the contempt involves a degree of fault or misconduct. Thus, accidental or unintentional disobedience is not

> sufficient to justify for holding one guilty of contempt. It is further relevant to bear in mind the settled law on the law of contempt that casual or accidental or unintentional acts of disobedience under the circumstances which negate any suggestion of contumacy, would amount to a contempt in theory only and does not render the contemnor liable to punishment and this was the view expressed also in *State of Bihar* v. *Rani Sonabati Kumari* [AIR 1954 Pat 513] and *N. Baksi* v. *O.K. Ghosh* [AIR 1957 Pat 528]."

This judgment also has no application to the facts of this case as the only reasonable or rational interpretation of the orders involved in this case leads to the result that INR 550 crore plus interest was to be paid without any linkage to sale of assets within a fixed time limit. This is also not a case of accidental or unintentional disobedience. As is clear from the letter dated 21.01.2019, the Reliance Companies are able to pay this amount, but are wilfully refusing to do so. Similarly, the judgments in **Mohd. Iqbal Khanday v. Abdul Majid Rather**, (1994) 4 SCC 34, at paragraph 34, and **Gyanichand v. State of A.P.**, (2016) 15 SCC 164, at paragraph 11 also do not apply on the facts of this case. The facts of this case are far from cases where directions or orders are impossible of compliance.

22. At this stage, we may point out that the contempt petition against the Chairman of SBI would not lie inasmuch as the Ericsson

transaction and the sale of assets by the Joint Lenders' Forum are completely independent of each other, as argued by Shri Dave himself, and as has been held by us hereinabove. Also, the statement made in paragraph 18 of the Contempt Petition No. 185 of 2019 that, "all the respondents in the contempt petition were bound to have handed over the amount of INR 550 crore to the petitioner on or before 15.12.2018 ……" is patently incorrect inasmuch as respondent no. 4 (SBI) has nothing to do with this amount of INR 550 crore which had to be paid over to Ericsson only by the three Reliance Companies. The contempt petition against the Chairman of SBI is, therefore, dismissed.

23. Having held the three Reliance Companies guilty of contempt of this Court, it is now necessary to point out Section 12(4) of the Contempt of Courts Act, 1971, which reads as follows:

> "**12. Punishment for contempt of court**.—
> xxx xxx xxx
> (4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced with the leave of the court, by the detention in civil prison of each such person :

> Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.
> xxx xxx xxx"

The question now is as to the punishment to be awarded. Shri Rohatgi pointed out that in **Supreme Court Bar Assn. v. Union of India**, (1998) 4 SCC 409, this Court had held:

> "**34.** The object of punishment being both curative and corrective, these coercions are meant to assist an individual complainant to enforce his remedy and there is also an element of public policy for punishing civil contempt, since the administration of justice would be undermined if the order of any court of law is to be disregarded with impunity. Under some circumstances, compliance of the order may be secured without resort to coercion, through the contempt power. For example, disobedience of an order to pay a sum of money may be effectively countered by attaching the earnings of the contemner. In the same manner, committing the person of the defaulter to prison for failure to comply with an order of specific performance of conveyance of property, may be met also by the court directing that the conveyance be completed by an appointed person. Disobedience of an undertaking may in the like manner be enforced through process other than committal to prison as for example where the breach of undertaking is to deliver possession of property in a landlord-tenant dispute. Apart from punishing the contemner, the court to maintain the majesty of law may direct the police force to be utilised for recovery of

> possession and burden the contemner with costs, exemplary or otherwise."

Thus, disobedience of an order to pay a sum of money may be countered by orders of attachment instead of committal to prison. On the other hand, Shri Dave pointed out that this Court had, in **Chhaganbhai Norsinbhai v. Soni Chandubhai Gordhanbhai**, (1976) 2 SCC 951, held that in cases of perverse and deliberate flouting of undertakings, the High Court rightly observed that it had no option except to convict the appellant and sentence him to three months' imprisonment, with which this Court agreed. He also pointed out that in **Patel Rajnikant Dhulabhai v. Patel Chandrakant Dhulabhai**, (2008) 14 SCC 561, so-called apologies, which are only tactful moves when contemnors are in a tight corner, should not be accepted and a jail sentence should be awarded [*see* paragraphs 77 and 78]. He also referred to and relied upon **Noorali Babul Thanewala v. K.M.M. Shetty**, (1990) 1 SCC 259, where this Court held:

> "**11.** When a court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in substance to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the court by or on behalf of a party to a civil proceedings is, therefore, regarded as tantamount to a breach of injunction although the remedies were not always

> identical. For the purpose of enforcing an undertaking that undertaking is treated as an order so that an undertaking, if broken, would involve the same consequences on the persons breaking that undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an injunction or breach of an undertaking given to a court by a person in a civil proceeding on the faith of which the court sanctions a particular course of action is misconduct amounting to contempt. The remedy in such circumstances may be in the form of a direction to the contemnor to purge the contempt or a sentence of imprisonment or fine or all of them. On the facts and circumstances of this case in the light of our finding that there was a breach of the undertaking we think that mere imposition of imprisonment or fine will not meet the ends of justice. There will have to be an order to purge the contempt by directing respondent 1-contemnor to deliver vacant possession immediately and issuing necessary further and consequential directions for enforcing the same."

24. Given the facts as aforesaid, we are of the view that the contempt of this Court needs to be purged by payment of the sum of INR 550 crore together with interest till date. As stated by the letter dated 21.01.2019, subject to any calculation error, an amount of INR 453 crore must be paid to Ericsson in addition to the deposit of INR 118 crore made in the Registry of this Court. The Registry of this Court is directed to pay over the sum of INR 118 crore to Ericsson within a period of one week from today. The RCom group is directed to purge the contempt of this Court by payment to Ericsson of the sum of INR

453 crore within a period of four weeks from today. In default of such payment, the Chairmen who have given undertakings to this Court will suffer three months' imprisonment. In addition to the aforesaid sum being paid, a fine amounting to INR 1 crore for each Company must also be paid to the Registry of this Court within four weeks from today. This sum will be paid over to the Supreme Court Legal Services Committee. In default of payment of such fine, the Chairmen of these Companies will suffer one month's imprisonment.

Contempt Petitions are disposed of, as aforesaid.

…….J.
(R.F. Nariman)

…….J.
(Vineet Saran)

New Delhi;
February 20, 2019.