

REPORTABLE

**IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION**

CONTEMPT PETITION (CIVIL) NO. 2120 OF 2018

IN

SPECIAL LEAVE PETITION (CIVIL) NO. 20417 OF 2017

VINAY PRAKASH SINGH

...PETITIONER(S)

Versus

SAMEER GEHLAUT & ORS.

...ALLEGED CONTEMNOR(S)

J U D G M E N T

Deepak Gupta, J.

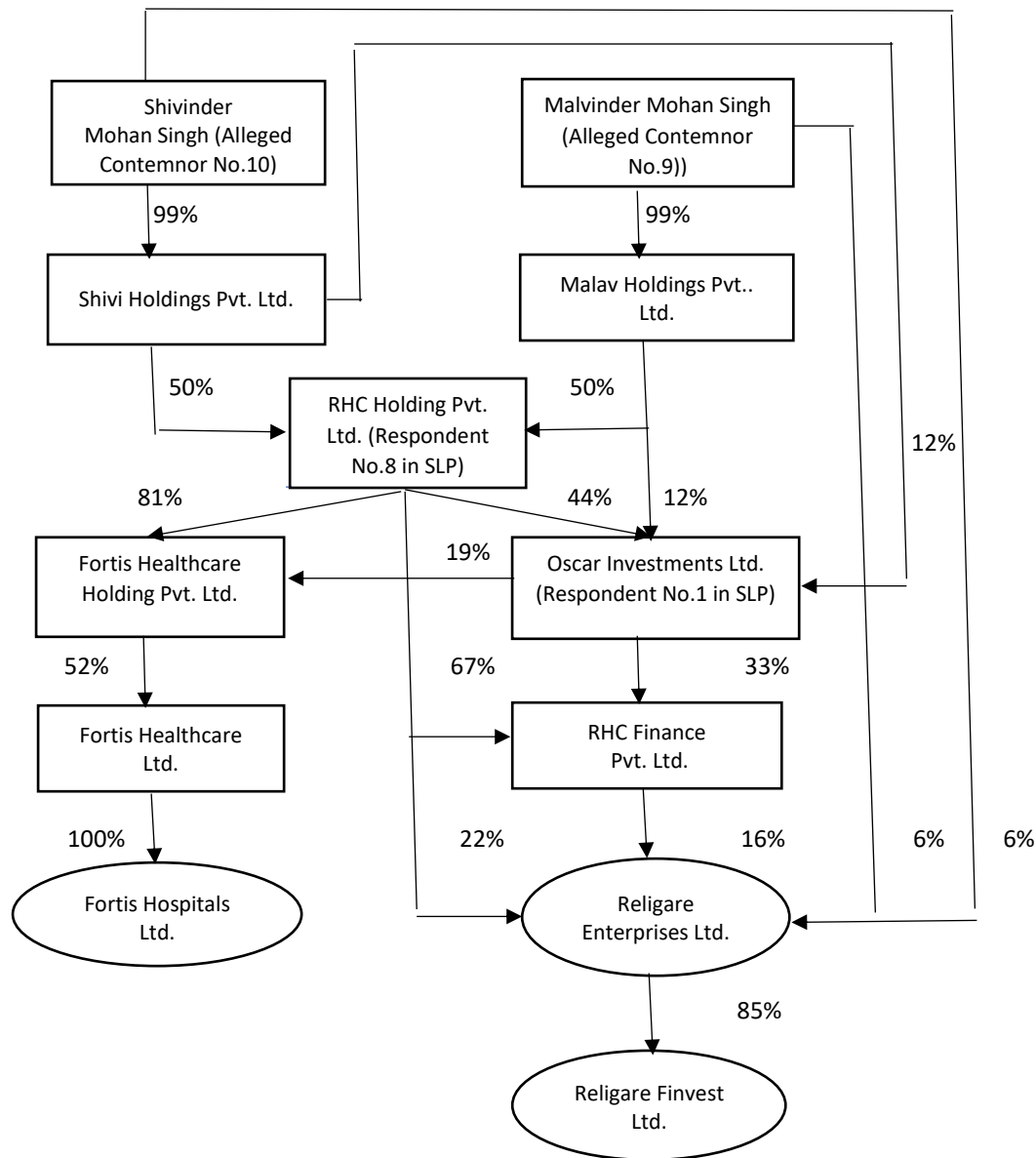
The Backdrop

A dispute between Daiichi Sankyo Company Limited (hereinafter ‘the petitioner’) and the respondents in Special Leave Petition (Civil) No.20417 of 2017, was referred to international arbitration. An arbitral award was passed on 29.04.2016 in Singapore whereby the petitioner was held entitled to receive Rs. 3500 crores approximately from respondent no.1 to 15 in S.L.P.(C) No.20417 of 2017. This award was challenged both in Singapore

and India. The objections have been dismissed and the award has become final. Though the respondents submit that in Singapore they have filed an appeal to the Court of Appeal, however they have not placed any stay order of the Court of Appeal on record. Admittedly, the award can be enforced.

2. The petitioner filed proceedings for the enforcement of the foreign award in Delhi High Court. The respondents no.1 to 15 in the SLP objected to the same and filed objections under Section 48 of the Arbitration and Conciliation Act, 1996 (for short 'the Act'). These objections were dismissed except insofar as respondents no. 5 and 9 to 12 before the High Court were concerned since these respondents were minors. The challenge to the judgment of the High Court has been rejected by this Court on 16.02.2018 in SLP (C) No.4276 of 2018.

3. Before dealing with the issues in detail it would be helpful to lay out the following chart to explain the relation between various entities belonging to the respondents in the SLP as on 31.03.2017 as reflected from order of SEBI dated 14.03.2019:



This chart clearly shows that as on March 31, 2017, Malvinder Mohan Singh (MMS) and Shivinder Mohan Singh (SMS) through Oscar Investments Limited (OIL) and RHC Holding Private Limited (RHC) held 100% stake in Fortis Healthcare Holding Private Limited (FHHPL) which in turn held a majority stake in Fortis Healthcare Limited (FHL).

Proceedings before the Delhi High Court

The first assurance

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:-

“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.”

It appears that the respondents had urged before the Court that their assurance should not be recorded in the order of the Court,

since that might affect the value of their shares in the share market. 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.

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:-

- 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;

- 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;
- 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;"

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 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

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:-

“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.”

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:-

- (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;
- (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.
- (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.”

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.

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%.

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 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.

7. In view of the above statement, the application is disposed of.”

This was the **fourth assurance** given by the respondents.

The fifth assurance / undertaking

11. Despite this order having been passed, it appears that an attempt was made to reduce the shareholding of OIL and RHC through FHHPL in FHL. A newspaper report was published on 20.06.2017 one day after the order had been passed by the Court reporting that IHH Healthcare Bhd. (Malaysian Company) was set to acquire 26% stake in FHL.

12. Thereafter, the petitioner filed a contempt petition before the High Court of Delhi alleging that the orders dated 06.03.2017 and 19.06.2017 had been violated. The matter was taken up by the High Court of Delhi on 21.06.2017. The High Court again recorded the undertaking of the learned senior counsel appearing for respondents 14 and 19 therein by which the High Court of Delhi was assured that the value of the shares held by OIL and RHC which have been disclosed as 452.60 crores and 1889.30 crores would not be hampered or diminished in any manner. Relevant portion of the order is as follows:-

“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. 2341.90 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.”

This undertaking is the **fifth assurance** given by the respondents to the Delhi High Court.

Proceedings before this Court

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:-

“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.”

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 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

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:-

“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).

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.”

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

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.

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.”

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.

The applications for directions are disposed of in the above terms.”

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.”

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.

18. We can divide the contemnors into two sets. One set being contemnors 1 to 8 and the second set of contemnors is 9 to 15. Contemnors 1 and 5 & 2 and 6 are the same namely Sameer Gehlaut and Gagan Banga. They have been arrayed twice separately in their capacities as Directors of IHFL and IVL. From the materials on record as far as the second set is concerned, we are only inclined to proceed against Malvinder Mohan Singh (contemnor nos. 9 and 12) and Shivinder Mohan Singh (contemnor nos. 10 and 13) both of whom have been arrayed twice separately in their capacities as Directors of Oscar Investments Limited and Directors of RHC Holding Private Limited.

Contemnor Nos. 1 to 8

19. We shall first deal with the issue whether contemnor nos. 1 to 8 have violated the aforesaid orders. The stand of the contemnor nos.1 to 8 is that loan facilities had been granted by IHFL to various companies controlled by MMS and SMS. As per the loan agreements and other documents executed, the borrower(s) created encumbrances on their immovable and movable properties including shares. Some shares were pledged or charged for repayment of the loan and IHFL was given a right to sell these encumbered shares without reference to the borrower(s). The stand of contemnors nos.1 to 8 is that the borrower(s) had a demat account of their shares with IVL and a power of attorney dated 28.11.2016 was issued in favour of IHFL permitting it to transfer shares from the demat account so as to ensure that the value of the security matches the outstanding amount. There is another undated power of attorney pursuant to the loan agreement dated 30.11.2016 which appears to have been registered on 03.12.2016. According to IHFL, after 11.08.2017 no shares were credited into the designated demat account by the pledger.

20. It would be pertinent to mention that IHFL filed an application in October, 2017 for clarification of order dated

31.08.2017. The stand of IHFL is that they have not transferred any shares encumbered after 11.08.2017. The case of the petitioner is that 12,25,000 shares were transferred in September, 2018. This fact is also not denied by IHFL. However, according to IHFL this was done on the basis of instructions issued to IVL by IHFL pursuant to the loan document including a power of attorney dated 28.11.2016. The stand of MMS and RHC is that IHFL used some pre-signed instruction slips to make these transfers but these facts were denied by IHFL. Reliance by IHFL is also placed on the order dated 15.02.2018 quoted hereinabove.

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.

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 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.

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:

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
3.	28 th 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
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
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 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.

32. 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 BSE within eight weeks from today. In case, the said contemnors purge themselves of the contempt, we may take a lenient view while imposing sentence.

Contemnors 9 & 10, 12 & 13

33. We shall now consider whether MMS, SMS have violated this Court's orders both in their individual capacity and as directors of OIL and RHC. We are dropping contempt proceedings against contemnor nos. 11, 14 and 15 because nothing has been placed on record to show that they were actively concerned with the running of the two companies.

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.

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 14.08.2018. 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

injunctioned 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.

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.

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.

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 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.

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 or wilful breach of an undertaking given to the Court.

Criminal contempt has been defined under Section 2(c) to include anything which scandalises or tends to scandalise 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.

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 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 authorised 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 manoeuvring, 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 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.

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 realisable 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

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.

47. However, we cannot let the matters stand as they are. On 14.12.2018, this Court had passed the following order:

“Issue notice.

The personal presence of the alleged respondents-contemnors 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.”

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 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.

50. We are prima facie of the view that these transactions were made by MMS, SMS, RHC, OIL and FHL to defeat the rights of the petitioner despite making undertakings to the High Court of Delhi that no action would be taken to prejudice petitioner's rights. We are prima facie of the view that these transactions are in wilful disobedience of the order of this Court dated 14.12.2018 read in conjunction with the earlier orders. We, therefore, issue suo moto notice of contempt and direct the Registry to register a fresh contempt petition with regard to the violation of the order dated 14.12.2018 in which RHC, OIL, MMS, SMS and FHL shall be arrayed as contemnors. FHL is directed to disclose the list of directors/officials actively involved in the running of the company for the period 01.01.2018 to 31.01.2019.

Directions

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 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.
- (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.

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.

.....CJI.
(Ranjan Gogoi)

.....J.
(Deepak Gupta)

.....J.
(Sanjiv Khanna)

New Delhi
November 15, 2019