* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 31st AUGUST, 2026

IN THE MATTER OF:

\# ***CNR No. DLHC011499942016***

EX.APPL.(OS) 3764/2022, EX.APPL.(OS) 1615/2025, EX.APPL.(OS) 3763/2022

IN

\+ **O.M.P.(EFA)(COMM.) 6/2016 & EX.APPL.(OS) 31/2020, EX.APPL.(OS) 1164/2020, EX.APPL.(OS) 1365/2021, EX.APPL.(OS) 3650/2022, EX.APPL.(OS) 3850/2022, EX.APPL.(OS) 244/2024, EX.APPL.(OS) 839/2025, EX.APPL.(OS) 1036/2025, EX.APPL.(OS) 1211/2025, EX.APPL.(OS) 1212/2025, EX.APPL.(OS) 1545/2025, EX.APPL.(OS) 1873/2025, EX.APPL.(OS) 1877/2025, EX.APPL.(OS) 54/2026, EX.APPL.(OS) 55/2026, EX.APPL.(OS) 56/2026, I.A. 5552/2019, I.A. 5553/2019**

DAIICHI SANKYO COMPANY, LIMITED .....Decree Holder

Through: Mr. Arvind Nigam, Senior Advocate with Mr. Giriraj Subramanium, Mr. Nabik Syam, Ms. Anindita Barman, Ms. Shyra Hoon, Mr. Tanmay Arora, Mr. Chirag Gupta, Advs.

versus

MALVINDER MOHAN SINGH AND ORS. .....Judgement Debtors

Through: Mr. Amit Sibal, Sr. Advocate with Mr. Ashish Mohan, Sr. Advocate along with Mr. Varun Garg, Mr. Gaurav Modwil and Mr. Shreyansh

Jain, Advocates for JD-1 with JD-1 in person.
Mr. Rajiv Nayar, Sr. Adv., Mr. Abhinav Vashisht, Sr. Adv., Mr. Sanjeev Kumar Sharma, Mr. Vaibhav Kakkar, Mr. Sahil Arora, Ms. Sanya Sud, Ms. Vaishali Goyal, Mr. Raahul Sharma, Ms. Manjira Dasgupta, Ms. Akshita Sachdeva, Mr. Kaveesh Nair, Mr. Arnav Chopra, Mr. Shreyas Maheshwari, Mr. Gauhar Mirza, Advs. for Fortis Healthcare Limited
Ms. Sayobani Basu, Ms. Durga Priya Manda, Ms. Dhriti Batra, Mr. Jitesh Lakra, Advs. for R-25
Mr. Rahul Sangwan, Adv. for Respondent No. 29 and 34
Ms. Aditi Mohan and Ms. Palak Bhargava, Advs. for non-applicant - Luxury Farms Pvt. Ltd.
Mr. Shiven Varma and Mr. Rudraksh Mathur, Advs. for Non-applicant - RC Nursery
Mr. Prateek Yadav and Ms. Jyotsna Punshi, Advs. for R-21 & 23
Mr. Jayant Mehta, Senior Counsel with Mr. Aman Gandhi, Mr. Parthasarathy Bose, Ms. Lavina Bhargava, Advocates for R26- EA No.3763 of 2022
Mr Balbir Singh, Senior Advocate along with Mr. Aditya Dewan, Mr. Naman Tondon and Ms. Shivali Shah, Ms. Ramneet Kaur, Advocates for JD 6& 8
Mr. Dayan Krishnan, Sr. Adv. with Mr. Sunjoy Ghose, Sr. Adv. with Mr. Rishi Agrawala and Mr. Tarini

Khurana, Advs., for Respondent No. 28 (Indiabulls).
Mr. Vivek Kohli, Sr. Adv with Mr. Sunjoy Ghose, Sr. Adv. with Mr. Rishi Agrawala and Tarini Khurana, Advs for R-28.
Mr. Jayant Mehta, Sr. Adv. with Mr. Rishi Agrawala, Mr. Tarini Khurana and Mr. Om Shelat, Advs., for Respondent No. 28 — Indiabulls Housing Finance.
Mr. Saman Ahsan, Ms. Srijata Majumdar and Mr. Rahul Sangwan, Advocates for Respondent Nos. 29 and 34
Mr. Ashim Vachher, Sr Adv; Mr Atul Sharma, Adv; Mr. Aditya Vashisht; Mr. Vinayak Uniyal, Adv; Ms. Saiba M. Rajpal, Ms Renuka Iyer Adv, Mr Aman Agarwal Advocates for R-22
Mr. Ateev Mathur with Mr. Amol Sharma, Advs for Respondent no. 24 RBL BANK LTD
Mr. Ritin Rai, Senior Advocate along with Mr. Prateek Yadav, Ms. Jyotsna Punshi, Ms. Nayanika Singhal, Advocates for R-21 (Yes Bank)
Mr. Aakash Kumar, Advocate for Respondents Nos. 27 and 35
Mr. Abhishek Singh, Adv. R-32 (DCB Bank)

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

EX.APPL.(OS) 3763/2022, EX.APPL.(OS) 3764/2022, EX.APPL.(OS) 1615/2025

1. As early as in 1872, the High Court of Judicature at Fort William in Bengal in General Manager of the Raj Durbhanga v. Maharajah Coomar Ramaput Sing, **(1871-72) 14 Moo IA 605: 20 ER 912**, has observed that "*the difficulties of a litigant in India begin when he has obtained a Decree".* Even in 1925, after quoting the aforesaid Judgment, the Privy Council in Kuer Jang Bahadur v. Bank of Upper India Limited, **AIR 1925 Oudh 448 (PC)** has observed as under:-

> *"Courts in India have to be careful to see that the process of the Court and the law of procedure are not abused by judgment-debtors in such a way as to make courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights."*

2. It is tragic to note that even after such strong observations by the Indian Courts throughout the years, nothing has changed even today. Generations pass but decrees are not executed as the Judgment Debtor has several arrows up in his quiver to defeat the rights of a Decree Holder and a Decree Holder is unable to reap the fruits of the decree even after winning two to three legal battles. The present case is also an example where a Foreign Award was passed on 29.04.2016 which has yet not been executed even after the Award has been upheld right up to the Apex Court. It is settled law that procedure is meant to advance the cause of justice and not to retard it. The Courts must be careful to ensure that the decrees are executed not only for the satisfaction of the Decree Holder, but to also hold the majesty of the Courts and administration of justice. The Apex Court in Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. **(1999) 2 SCC 325,**

has observed that "*it is true that proceedings are dragged for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and a person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time.*"

FACTS OF THE CASE

3. The disputes between the Decree Holder and the Judgment Debtors was referred to arbitration and an Award dated 29.04.2016 was passed in Singapore. Under the said Award, the Judgment Debtors were directed to pay Rs. 2,562 crore with pre-Award interest @ 4.44% and post-Award interest @ 5.33%. It is the case of the Decree Holder that as on date, approximately a sum of Rs. 5,300/- crore is due and payable by the Judgment Debtors under the said decree.

4. Pending the challenge to the Award under the Arbitration & Conciliation Act, 1996, the Decree Holders initiated proceedings for execution of the Award which is the subject matter of the present enforcement proceedings.

5. It is pertinent to mention that the challenge to the Award was rejected by a learned Single Judge of this Court *vide* Order dated 31.01.2018 which was affirmed by the Apex Court *vide* Order dated 16.02.2018 in SLP (C) 4276/2018. The Applications filed by the Decree Holder in the present execution proceedings are described as under:

a. EX. APPL.(OS) 3763/2022 has been filed by the Decree Holder seeking appointment of Forensic Auditor in respect of 17 banks and financial institutions in terms of the directions passed by the Apex Court in its Judgment dated 22.09.2022 passed in SLP(C) No.20417/2017, Contempt Petition (C) No.2120/2018 and Suo Motu Contempt Petition being SMC(C) 4/2019.

b. EX. APPL.(OS) 3764/2022 has been filed by the Decree Holder seeking appointment of Forensic Auditor in terms of the directions passed by the Apex Court in its Judgment dated 22.09.2022 passed in SLP(C) No.20417/2017, Contempt Petition (C) No.2120/2018 and SMC(C) 4/2019.

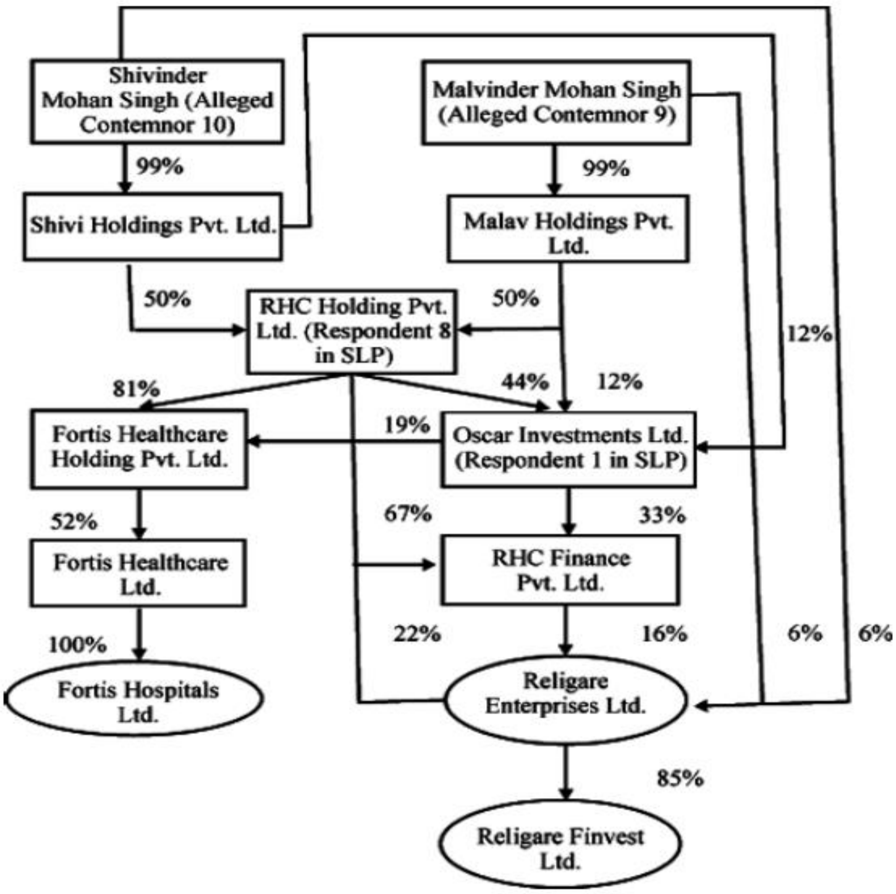
c. EX.APPL.(OS) 1615/2025 has been filed by the Decree Holder under Order XIII Rule 1 of the CPC for bringing on record certain additional documents to demonstrate as to how the Judgment Debtors have taken steps to fritter away the amounts available with them with the aid and abetment of others on the date when the decree was passed to defeat the decree.

6. While reviewing these applications, the Court will decide if a forensic audit is needed to expose how the Judgment Debtors dissipated their assets in direct defiance of the undertakings and the Stay Orders of the Apex Court, and to lay down a framework in accordance with law to get the money back from anyone who tried to block the decree from being enforced.

7. Material on record discloses that JD No. 1 and JD No. 6 held several entities who ultimately have substantial controlling interest in an entity called as Fortis Healthcare Limited *(hereinafter referred to as '***FHL***')*, through another entity known as Fortis Healthcare Holding Private Limited

(*hereinafter referred to as* '**FHHPL**'), an entity which is wholly owned by JD No. 1 and JD No. 6, whether directly in their own capacities or indirectly through their other affiliated entities.

8. The chart depicting the shareholding of JD No. 1 and 6 in the downstream entities completely controller by them have been succinctly described in a tabular form by the Apex Court in Vinay Prakash Singh v. Sameer Gehlaut & Ors., **(2021) 16 SCC 319**. The said table is reproduced hereunder:-



9. It is pertinent to mention that on the date when the chart was prepared, i.e., 31.03.2017, which is within one year of the date of passing of the Award, 71.7% shareholding of FHHPL in FHL has come down to 52%

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Signed By:RAHUL SINGH
Signing Date:31.08.2026 16:26:34

shareholding, meaning thereby that the Judgment Debtors had already started dissipating their shares in FHL right from the date of the passing of the Award.

10. In the execution proceedings which were filed immediately after the passing of the Award when the Decree Holder expressed apprehension that the Judgment Debtors would fritter away their assets and would make the Award unenforceable. The Decree Holder filed IA No. 6558 of 2016 in the execution proceedings praying that the Judgment Debtors be restrained from alienating or encumbering their assets in order to preserve the decretal amount. Counsels appearing for the Judgment Debtors assured this Court that the interest of the Decree Holder would be protected. It is evident from a Letter dated 24.05.2016 sent by the learned Counsel for the Decree Holder to the learned Counsel for the Judgment Debtor. The letter which has been quoted in several proceedings reads as under:-

> ***"1. I am concerned for my client, the Petitioner abovenamed. The captioned matter was listed as Item No.33 in Court No.21 of the Hon'ble Delhi High Court before a bench comprising of Hon'ble Mr. Justice V. Kameswar Rao. His Lordship has been pleased to order that the matter be renotified on 22 August 2016. 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 respondent's interest in the share market as some of his clients are listed in the stock exchange.

2. We respect the fair assurance given by the Learned Senior Counsel given to the Hon'ble Court today, at this stage.

3. Since the Hon'ble Court has been pleased to allow Petitioner's request to keep the Arbitral Award dated 29 April 2016, as well as the Agreement dated 11 June 2008, confidential, we request you to keep this letter as well strictly confidential.

4. This letter is without prejudice to the rights and contentions of my client.
Kind regards.

Yours sincerely,

Sd/-

Nikhil Nayyar"

(emphasis supplied)

11. The assurance was given to the effect that the interest of the Judgment Debtors under the Award would be protected and there will be no *fait accompli*. The assurance was not recorded by the Court because the Counsel for the Judgment Debtors stated that any order from the Court would affect the interest of the Judgment Debtors in the share market as some of the companies held by the Judgment Debtors are publicly listed having shares listed in the stock market. This undertaking by the Senior Counsel for the Judgment Debtors was the **first assurance**.

12. When it was found that the asset base of the Judgment Debtors in

FHL and other assets were being reduced despite the afore mentioned assurance, the Decree Holder filed I.A. No. 618 of 2017 for an order directing the Judgment Debtors to secure the awarded amount by depositing the same with the Registry of this Court or by providing adequate security or bank guarantee or by other means and also for an order directing attachment of the movable and immovable assets and properties of the Judgment Debtors and other properties in which the Judgment Debtors have beneficial interest to the extent of the awarded amount. The application came up for hearing on 23.01.2017. The relevant portion of the Order dated 23.01.2017 reads as under:-

> *"**1. Mr. Harish N. Salve, learned Senior counsel appearing for Respondent Nos. 1 to 4 and 13 reiterates the assurance given to the Court as recorded in the letter dated 24th May, 2016 addressed by counsel for the Petitioner to the counsel for the Respondents. Mr. Salve further states that within two weeks and, in any event, not later than 8th February, 2017, the particulars and assurance in the manner sought by the Court will be furnished on an affidavit by any one of the Respondents on behalf of the rest of the Respondents.***
>
> *2. List on 14th March, 2017."*
>
> (emphasis supplied)

13. This Order dated 23.01.2017 is construed by this Court to be the **Second Assurance** tendered by the Judgment Debtors in furtherance of the Letter dated 24.05.2016.

14. In compliance of the Order dated 23.01.2017, an affidavit of assets was filed by the Judgment Debtors disclosing their asset base. The relevant portion of the Affidavit dated 08.02.2017 filed by the Judgment Debtors

read as under:-

> *"4. All the Respondents had submitted their respective affidavits disclosing their assets on 6.12.2016 to this Hon'ble Court. The aggregate book value of investments held by all the Respondents (excluding investments inter-se amongst the Respondents) as per the said Affidavits is Rs.10,217.10 crores out of which investments to the tune of Rs.1,409.93 crores are encumbered leaving the residual investments to the tune of Rs.8,807.18 crores as unencumbered.* ***Further, as on 31.12.2016, the book value of investments held only by RHC Holding Private Limited (Respondent No. 19) as on 31.12.2016 is Rs.6,510.54 crores out of which investments to the tune of Rs.1,513.86 crores are encumbered leaving the residual investments to the tune of Rs.4,996.86 crores as unencumbered.***
>
> ***5. Respondent No. 19 also undertaken an internal valuation of its unencumbered investments as on 31.12.2016 mentioned in para (4) above and based on such internal valuations, the estimated [on a conservative basis] fair value of its unencumbered investments as on 31.12.2016 is approximately Rs.3,453 crores.***
>
> *6. Apart from the aforesaid investments, Respondent No. 19 has also extended loans and advances (other than loans and advances to other Respondent entities), and after netting off the loans raised on current assets, the amount of loans and advances recoverable is Rs.252.59 crores as on 31.12.2016 which is over and above the aforesaid investments.*
>
> ***7. There is no intention of selling any of the unencumbered investments by way of shares held by Respondent No. 19. A proposal which is under discussion may involve the sale of 29,00,000 equity shares of SRL Limited held by Respondent No. 19***

and 7,05,000 equity shares of SRL Limited held by Malav Holding Private Limited (Respondent No. 15) to external investors in the near future. These shares of SRL Limited are encumbered and thus not included in the value of unencumbered assets mentioned at paras (4) & (5) above. Obviously this will have to be after obtaining the consents of the security holders. The proceeds of such sale will have to be utilized to pare down the debt the net assets of the Respondents will thus remain unchanged. The shares being sold [36,00,000] which are below 5% of the share capital of SRL will be sold to an external investor. The further proposal under consideration is to merge SRL with another listed group company at a later point of time. Even if this does take place, this will have no implications on the net assets of the Respondents. "

(emphasis supplied)

15. The Judgment Debtors through this affidavit clearly provided another undertaking to not sell any of the unencumbered investments held by them by way of shares. This Court construes the said undertaking as the **third assurance.**

16. The affidavit of assets filed by the Judgment Debtors on 08.02.2017 did not provide the requisite details as directed by the Court *vide* Order dated 23.01.2017. Hence, this Court *vide* Order dated 06.03.2017 directed the Counsels for the Judgment Debtors to file fresh affidavits of assets reflecting information relating to all the unencumbered assets, both movable and immovable, and not merely investments and loans.

17. Another assurance, being the **fourth assurance**, was given by the Judgment Debtors on 06.03.2017 that they had no intentions to sell any of the unencumbered assets. The Order dated 06.03.2017 is reproduced

hereunder:

> *"**4. It was further stated in the affidavit that there was no intention to sell any of the unencumbered assets by way of shares held by Respondent No.19. It was stated that what was under discussion was only the sale of the equity shares of SRL Limited which were encumbered and thus not included in the value of the unencumbered assets. It was stated in para 9 "the value of the unencumbered assets declared is sufficient security for the Award in the event it is enforced. This fair value of unencumbered assets as mentioned in para (5) does not include value of 5 crore equity shares of Fortis Healthcare Limited held by the underlying subsidiary of the Respondents which have been kept aside from the aforesaid valuation for the sake of flexibility and debt repayments of various group entities."***
>
> *5. As far as the shares held by Oscar Investments Ltd. ('OIL') Respondent No.14, it was stated in the above affidavit dated 8th February 2017 that there were investments worth Rs.1,075.40 crores (at book value and after excluding investments in other entities which were all unencumbered) as on 31st December 2016. As per its internal valuation the estimated fair value of the said unencumbered investments as on the above date was stated to be Rs.854.46 crores. It was stated that Respondent No.14 also had extended loans and advances to various entities for Rs.506.10 crores.*
>
> *6. Enclosed with the above affidavit dated 8th February 2017 were two certificates issued by the Statutory Auditors of Respondents 9 and 14 - M.S. Sekhon & Co. A perusal of the said certificates reveals that they deal with the unencumbered investments and the loans and advances of Respondent No. 14 and Respondent No. 19. The said two certificates do not state if there are other movable and/or immovable*

assets of Respondents 14 and 19 which are unencumbered and available for being realised towards satisfaction of the decretal amount.

7. In response to the present application an affidavit has been filed by Respondent No. 19 in which it is stated in para 6 as under:

> *"Without prejudice to the foregoing, it is stated that in terms of the Order dated 23 January 2017, the Respondents, as understood by its counsels, were not directed by this Hon'ble Court to furnish details/particulars of the unencumbered assets held by them. The Counsel's (sic) and the Respondents understanding of the said order was that the Respondents were required to establish that they held unencumbered assets, sufficient to meet the Majority Award, if the same was held enforceable in India."*

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 immoveable, and not merely investments and loans and advances.

9. At this stage both Dr. Abhishek Manu Singhvi and Mr. Rajiv Nayar, learned Senior counsel, appearing for the Respondents state that they will, in two sealed covers, filed with the Registrar (Original Side) within one week, furnish the complete details/particulars of all the unencumbered assets of Respondents 14 and 19 as of date. This will not be limited to investments, loans and advances but include all other movable and immovable assets. The Respondents 14 and 19 will in *those details clearly indicate which of the investments are in related/group companies and which in companies whose shares are listed. It is clarified that the purpose of this direction is to ascertain how much of the assets of Respondents 4 and 19 are realisable towards satisfaction of the decretal amount, as and when that stage arises. Further furnishing of these details by the Respondents will be without prejudice to the objections they have to the enforcement of the Award which will be heard by the Court on merits on subsequent dates.*

10. As far as the Chartered Accountants of the Respondents are concerned, the Court directs M.S. Sekhon & Co. to provide within ten days from today certificates as per the books of account in respect of Respondents 14 and 19 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.

11. Copies of these certificates will be placed on record by Respondent 14/Respondent 19 together with an affidavit at least three days prior to the next date with an advance copy to learned counsel for the

Applicant.

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. "

(emphasis supplied)

18. In pursuance to the said Order, certificates and affidavits disclosing the value of unencumbered assets, investments etc. were filed before this Court. Certificates had been filed by Oscar Investments Limited being JD No.14 and RHC Holding Private Limited being JD No.19, disclosing the value of unencumbered assets and investments.

19. The said certificates and affidavits dated 14.03.2017 disclosed the assets of JD No. 14 and 19 as on 28.02.2017. As per the affidavit, JD No. 14 had unencumbered value of a value of 1953.70 crores having fair value of Rs. 1204.78 crores. The fair value of unencumbered investments of JD No. 14 including related/group entities was valued at Rs.854.64 crores and as far as JD No. 19 is concerned, the book value of unencumbered assets was shown as Rs. 6,346.69 crores having the fair value of Rs.3579.26 crores and the value of unencumbered investments was shown as Rs.3246.76 crores. By way of these affidavits, a picture was projected before this Court that the asset base of the companies was strong enough to cover the entire decretal amount. In retrospect, in the opinion of this Court, this was only a method to prevent this Court from passing any order directing the Judgment Debtors to deposit the decretal amount or from ordering attachment of their assets. Had the Court intervened at that stage by directing a deposit or attachment, the present labyrinth of execution proceedings and the persistent frustration of

the decree could well have been avoided.

20. The Judgment Debtors had maintained a stance that their asset base lies in several companies, a few of them even listed in the stock exchange. One of such listed companies was FHL held by the holding company FHHPL. FHL is a public listed company in which JD No. 14 and 19 held a controlling stake of around 52% up till March, 2017, through FHHPL. On 25.05.2017, FHL issued notice to its shareholders proposing that the shareholding of foreign shareholders in the company would be increased.

21. Right after, the Decree Holder approached this Court by filing IA No. 7142 of 2017 to stop OIL/JD No. 14 and RHC/JD No. 19 from diluting their 100% stake in FHHPL or indirectly transferring FHHPL's shares in FHL, demanding they maintain a 52% holding. Simultaneously, BSE disclosures showed that FHHPL's actual stake in FHL had already fallen to 45.7%. The unencumbered shareholding of the shares held by the Judgment Debtors in FHL which was actually the backbone of the assets held by the Judgment Debtors was slowly coming down.

22. On 19.06.2017, another assurance was given portraying a picture before this Court that the decretal amount is secure and the Judgment Debtors will not take any steps to defeat the decree by changing the status of unencumbered assets. The relevant portion of the Order dated 19.06.2017 reads as under:-

> *"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. "*

The assurance given on 19.06.2017, is the **fifth assurance** given to this Court.

23. Despite of these assurances, the shareholding of JD No. 1 and 6 in FHL through their wholly owned subsidiaries, i.e., FHHPL was depleting. Further, a newspaper report had been published on 20.06.2017, i.e., a day after the fifth assurance was tendered to this Court, that a Malaysian based company called as IHH Healthcare Bhd. through Northern TK Venture Pte. Ltd. ('**NTK**') was set to acquire 26% stake in FHL. As such, a contempt petition was filed before this Court alleging that the Order dated 06.03.2017 and 19.06.2017 was being violated.

24. The controversy surrounding the IHH–NTK transaction concerns the acquisition of the controlling stake in FHL by IHH Healthcare Berhad during the pendency of proceedings before the Apex Court relating to the enforcement of the Award against the Judgment Debtors. It was alleged that the transaction resulted in a substantial dilution of the shareholding of JD No. 1 and 6, and involved an infusion of approximately Rs. 4,000 crores into FHL. The sale consideration was thereafter proposed to be utilised by FHL for the acquisition of healthcare assets from RHT Health Trust, Singapore. The Apex Court in Daiichi Sankyo Company Limited v. Oscar Investments Limited & Ors., **(2023) 7 SCC 641**, made an observation that the board members of RHT Health Trust, at that time, consisted of family members of JD No. 1 and 6.

25. The matter was taken up by this Court on 21.06.2017 wherein the Counsel for the JD No. 14 and 19 again provided an undertaking to this Court. The Order dated 21.06.2017 reflects the **sixth assurance** tendered to this Court. The relevant portion of the Order dated 21.06.2017 reads as

under:-

> *"8. Since the petitioner has raised an issue with regard to the shareholding of Fortis Healthcare Holding Pvt. Ltd. in Fortis Healthcare Limited, the present order is being restricted to the value of the said unencumbered asset disclosed in the affidavit.*
>
> *9. The learned Senior Counsel appearing for Respondents 14 and 19 submits that the value of the unencumbered asset comprising of equity share in Fortis Healthcare Holding Pvt. Ltd. has been disclosed as Rs 452.60 crores by Respondent 14 and Rs 1889.30 crores by Respondent 19.*
>
> *10. The learned Senior Counsel appearing on behalf of Respondents 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 the learned Senior Counsel for Respondents 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 Respondents 14 and 19, in fortis Healthcare Holding Pvt. Ltd. towards the satisfaction of the decretal amount as and when the stages so arises."*

26. The Order dated 21.06.2017 was challenged by filing SLP(C) 20417/2017 before the Apex Court. Taking note of the continuous fall in the shareholding of FHHPL in FHL, the Apex Court on 11.08.2017 passed an order directing that status quo be maintained with regard to the shareholding of FHHPL in FHL. The Order dated 11.08.2017 reads as under:-

> *"**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."***

(emphasis supplied)

27. Pursuant to the said Order, FHL made a disclosure on 11.08.2017 before the Stock Exchange which establishes that FHL had knowledge of the execution proceedings. The relevant portion of the disclosure is reproduced hereunder:-

> *"Pursuant to Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, this is to inform you that* ***the Hon'ble Supreme Court vide its interim order dated August 11, 2017, in the matter relating to M/s Daiichi Sankyo Company Limited vis Oscar Investments Limited & Others, directed that status quo as on date with regard to shareholding of M/s Fortis Healthcare Holding Private Limited, one of the Promoter Group Entity in the Company be maintained****."*

(emphasis supplied)

28. The Apex Court *vide* its Order dated 31.08.2017 clarified that the Order dated 11.08.2017 was passed in regards to both encumbered and unencumbered shares of FHL held by FHHPL, by passing the following order:-

> *"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.****"*

(emphasis supplied)

29. The slow dissipation of FHHPL shareholding in FHL has been noted by the Apex Court in Vinay Prakash Singh v. Sameer Gehlaut & Ors., **(2021) 16 SCC 319.** The relevant portion of the said Judgment reads as under:-

> *"**27.** FHL is a public company and being a listed company, it has to disclose its shareholding patterns to the stock exchange. A chart showing shareholding pattern of Fhhpl in FHL will show the position of holdings at various stages:*

Sl. 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.	*28th Jan 2017*	*32,50,91,529*	*25,19,23,248*	*7,31,68,281*
4.	*March 2017*	*27,02,41,529*	*23,18,01,440*	*3,84,40,089*
5.	*June 2017*	*22,22,11,701*	*18,38,96,484*	*3,83,15,217*
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*

30. A perusal of the said chart is tell-tale. There is nothing on record to show what is the business of FHHPL. FHHPL has only pledged shares of FHL held by it to secure the debts taken by the downstream companies of JD No. 1 and JD No. 6. The business of the downstream companies is also not known. Loans were taken by the downstream entities for which shares of FHL were pledged by FHHPL. The purpose of the underlying transaction between the companies and the banks for which the shares were pledged has

not been made known to this Court or to the Apex Court. This Court is, however, conscious of one undisputed fact that on the date the decree was passed, FHHPL held approximately 71.7% of the shareholding in FHL. By September 2016, this holding had already diminished to 52%. At that stage, FHHPL held 32,50,91,529 shares in FHL, comprising 27,21,59,955 encumbered shares and 5,29,31,574 unencumbered shares. The value of the unencumbered shares alone, even after the First Assurance had been furnished to this Court, was more than adequate to secure the decretal amount. Yet, despite such substantial security being available, the position today is startling; FHHPL no longer holds even one percent shareholding in FHL. The complete dissipation of what was once a controlling stake, in the absence of any satisfactory explanation, raises serious concerns that cannot be ignored by this Court.

31. Multiple representations have been tendered before this Court. The entirety of the share capital in FHHPL is beneficially held by JD No. 1 and 6, through their affiliate corporate entities, granting them absolute control over the functions of FHHPL. Furthermore, undertakings through sworn affidavits have been submitted by JD No. 14 and JD No. 19. Legally, these undertakings are exclusively attributable to JD No. 1 and 6, by virtue of their absolute 100% shareholding and control over both JD No. 14 and JD No. 19 which in turn held 100% shareholding in FHHPL.

32. The Apex Court in Daiichi Sankyo Company Limited v. Oscar Investments Limited & Ors., **(2023) 7 SCC 641** has produced a table to demonstrate the loans taken by the downstream entities of JD No. 1 and 6. A bare perusal of the table demonstrates that several loans were taken by these downstream entities against the shares of FHL held by FHHPL even after

the assurances of JD No. 1 and 6. The said table is reproduced hereunder:-

29-4-2016	*Arbitral Award in favour of Daiichi*	*Vol.5, 6, p. 8*
18-5-2016	*Sections 47/49Arbitration and Conciliation Act, 1996 preferred before the Delhi High Court by Daiichi being OMP (FEA) (Comm.) No. 06/2016*	*Vol. 1, p. 24*
20-5-2016	*Credit facility agreement containing a top up mechanism between RHC and CSFIPL secured by pledge of 68,50,000 FHL shares*	*Vol. 171, pp. 117, 232*
24-5-2016	***First undertaking before the Delhi High Court by Respondents***	***Vol. 1, p. 78***
30-6-2016	***Standby letter of credit of Rs 304.5 crores extended by YBL to LVL.***	*Vol. 200, p. 9*
19-7-2016	***Rs 72.5 crores remains outstanding as on 23-3-2021.*** ***YBL extended credit facility of Rs 304.5 crores to Ligare Voyages Ireland Ltd. for refinance of loan granted by ICICI Bank and Punjab National Bank for purchase of 5 aircrafts***	*Vol. 175, p. 508* *Vol. 176, pp. 710, 743* *Vol. 224, p. 8*
27-7-2016	*Put option agreement executed between FHHPL and YBL recording that pursuant to various loans to group companies, YBL had a right to call upon FHHPL to pay any amount due to YBL*	*Vol. 200, p. 9, 44*
27-7-2016	***91,43,554 FHL shares were encumbered in favour of YBL to secure Put Option***	*Vol. 200, p. 10* *Vol. 175, p. 424*
28-7-2016	***Cross-collateral by YBL over 2,65,02,852 FHL shares [w.r.t. 30-3-2016] to secure LVL [Rs 304.5 crores] facility***	*Vol. 175, p. 401*
22-8-2016	*Submission before the Delhi High Court by the Respondents that there is no change in ownership of assets (second undertaking)*	*Vol. 1, p. 87*
26-8-2016	***Cross-collateral by YBL over 1,05,50,000 FHL shares [w.r.t. 2-5-2014] to secure LVL [Rs 304.5 crores] facility***	*Vol. 173, p. 160*
26-8-2016	***Cross-collateral by YBL over 1,99,00,500 FHL shares [w.r.t. 20-2-2015, 5-6-2015, 11-9-2015, 27-11-2015, 15-3-2016] to secure LAL (Rs 100 crores), LVL [Rs 304.5 crores], LVL (Rs 130 crores), HTL (Rs 200 crores) facility***	*Vol. 174, pp. 240, 252*
30-8-2016	***7,25,000 FHL shares pledged in favour of LVB against 26-10-2016***	*Vol. 202,*

	facility	p. 2
30-9-2016	**20,00,000 FHL shares additionally pledged in favour of ABL w.r.t. standby letter of credit for USD 72.5 million executed between RCMIML and ABL.**	Vol. 169, p. 424
30-9-2016	**60,00,000 FHL shares additionally pledged in favour of ABL w.r.t. standby letter of credit for USD 72.5 million executed between RCMIML and ABL.**	Vol. 169, p. 424
30-9-2016	**50,00,000 FHL shares additionally pledged in favour of ABL w.r.t. standby letter of credit for USD 72.5 million executed between RCMIML and ABL**	Vol. 169, p. 424
30-9-2016	**10,00,000 FHL shares additionally pledged in favour of ABL w.r.t. standby letter of credit for USD 72.5 million executed between RCMIML and ABL**	Vol. 169, p. 424
30-9-2016	**2,00,000 FHL shares additionally pledged in favour of ABL w.r.t. standby letter of credit for USD 72.5 million executed between RCMIML and ABL.**	Vol. 169, p. 424
30-9-2016	**Total 40,75,000 FHL shares stood encumbered in favour of RBL**	Vol. 201, p. 4
4-10-2016	Release of 20,00,000 FHL shares by ABL [w.r.t. 29-9-2015]	Vol. 197, pp. 4, 44
7-10-2016	OIL paid back Rs 161 crores to YBL against loan sanctioned on 20-2-2015	Vol. 224, p. 6
31-10-2016	**38,95,000 FHL shares pledged in favour of LVB against 26-10-2016 facility**	Vol. 202, p. 2
2-12-2016	Affidavit of assets preferred by Singh Brothers, OIL, RHC before the Delhi High Court	Vol. 54, pp. 31, 39, 46, 51
9-12-2016	LVB released 18,00,000 FHL shares against reduction of loan facility of 26-10-2016 from Rs 150 crores to Rs 100 crores	Vol. 202, p. 3
15-12-2016	**Total of 2,58,50,000 FHL shares stood encumbered in favour of YBL**	Vol. 228, p. 4
23-12-2016	**YBL sanctioned a loan amount of Rs 565 crores to OIL**	Vol. 175, p. 521
	Rs 225 crores released immediately. Rs 430.4 crores remain outstanding as of 23-3-2021.	Vol. 200, p. 11 Vol. 176, pp. 754, 786
5-1-2017	**Loan-cum-pledge agreement executed between Ambit, RHC and FHHPL**	Vol. 159, p. 35
10-1-2017	**Cross-collateral [w.r.t. 27-10-2015] over 2,37,35,000 FHL shares to secure LVL [Rs 304.5 crores] facility by YBL**	Vol. 174, p. 307

17-1-2017 [Daiichi Sankyo Co. Ltd. v. Malvinder	Delhi High Court order recording respondent's submission that undertaking dated 24-5-2016 still holds (third undertaking)	

Mohan Singh, 2017 SCC OnLine Del 12975]		
Pre 23-1-2017, 6-3-2017	***ABL held pledges of 2,58,50,000 FHL shares***	*Vol. 197, p. 5*
23-1-2017	*Undertaking furnished before the Delhi High Court by the respondents (fourth undertaking)*	
8-2-2017	*Delhi High Court order recording Respondents' undertaking (fifth undertaking)*	*Vol. 1, p. 143*
15-2-2017	***Pledge over 58,31,000 FHL shares recorded in favour of YBL***	*Vol. 174, p. 255*
23-2-2017	*OIL paid back Rs 339 crores to YBL against loan sanctioned on 20-2-2015*	*Vol. 224, p. 6*
28-2-2017	*Affidavit filed by Daiichi Sankyo annexing a list of all outstanding charges of all respondent companies in the enforcement petition till 27-2-2017 per filings with Ministry of Corporate Affairs*	*Vol. 1, pp. 211-2281*
6-3-2017	*Sixth undertaking furnished before the Delhi High Court by the Respondents*	
9-3-2017	*Amendment to 27-7-2016 put option agreement between FHHPL & YBL, recording that put option right would now also cover an additional facility of OIL (Rs 565 crores)*	*Vol. 200, p. 63*
9-3-2017	*Top up pledge over additional shares of REL created in favour of Ambit due to margin shortfall*	*Vol. 159, p. 96*
9-3-2017	***Cross-collateral by YBL [w.r.t. 2-5-2014] over 1,05,50,000 FHL shares to secure Put Option w.r.t. RHC (Rs 300 crores), LAL (Rs 100 crores), HTL (Rs 200 crores), LVL (Rs 304.5 crores), Dion (Rs 130 crores), OIL (565 crores), FSSPL (Rs 250 crores)***	*Vol. 176, 177 pp. 797, 811*
9-3-2017	***Cross-collateral by YBL [w.r.t. 20-2-2015, 5-6-2015, 11-9-2015, 27-11-2015, 15-3-2016, 30-3-2016] over 2,57,31,500 FHL shares to secure Put Option w.r.t. RHC (Rs 300 crores), LAL (Rs 100 crores), HTL (Rs 200 crores), LVL (Rs 304.5 crores), Dion (Rs 130 crores), OIL (565 crores), FSSPL (Rs 250 crores)***	*Vol. 177, pp. 815, 828*
9-3-2017	***Cross-collateral by YBL [w.r.t. 27-10-2015] over 2,37,35,000 FHL shares to secure Put Option w.r.t. RHC (Rs 300 crores), LAL (Rs 100 crores), HTL (Rs 200 crores), LVL (Rs 304.5 crores), Dion (Rs 130 crores), OIL (565 crores), FSSPL (Rs 250 crores)***	*Vol. 177, p. 832*

9-3-2017	***Cross-collateral by YBL [w.r.t. 30-3-2016, 27-7-2016] over 3,56,46,406 FHL shares to secure Put Option w.r.t. RHC (Rs 300 crores), LAL (Rs 100 crores), HTL (Rs 200 crores), LVL (Rs 304.5 crores), Dion (Rs 130 crores), OIL (565 crores), FSSPL (Rs 250 crores)***	*Vol. 175, p. 463*
15-3-2017	*14-3-2016 Credit facility between CSFIPL and RHC Holdings Ltd.*	*Vol. 203,*

	closed. CSFIPL released all pledges over shares of FHL.	*p. 2*
22-3-2017	*20-5-2016 Credit facility between CSFIPL and RHC Holdings Ltd. closed. CSFIPL released all pledges over shares of FHL.*	*Vol. 203, p. 2*
March' 2017	*YBL released Rs 340 crores to Oscar against loan sanctioned on 23-12-2016*	*Vol. 224, p. 6*
3-5-2017	*Loan of Rs 150 crores sanctioned by YBL to LAL.* *Rs 10 crores remains outstanding as of 23-2-2021.*	*Vol. 200, p. 14* *Vol. 175, p. 530*
19-5-2017	***Standby letter of credit for Rs 100 crores executed between DION and ABL. 42,33,333 FHL shares pledged in favour of ABL.***	*Vol. 170, p. 649*
19-5-2017	***Short term loan facility for Rs 140 crores executed between DION and ABL. 64,16,667 FHL shares pledged in favour of ABL.***	*Vol. 170, p. 672*
19-5-2017	***3,50,000 FHL shares additionally pledged in favour of ABL in relation to standby letter of credit for Rs 100 crores executed between DION and ABL.***	*Vol. 170, p. 649*
24-5-2017	*Letter of intent issued by IHH Healthcare Berhad to FHL and connected entities in furtherance of a proposal for acquisition*	*Vol. 86, p. 32*
2-6-2017	***Top up pledge over additional shares of FHL created in favour of Ambit due to margin shortfall***	*Vol. 159, p. 95*
7-6-2017	*Release of 1,06,50,000 FHL shares by ABL [w.r.t. 28-3-2014]*	*Vol. 197, pp. 84-92*
7-6-2017	***Pledge agreement in respect of 22,00,000 FHL shares already encumbered in favour of RBL w.r.t. 29-11-2012 to also secure credit facility w.r.t. 27-7-2012***	*Vol. 178, p. 92*
15-6-2017	***Pledge agreement to create a cross-collateral over 1,42,00,000 FHL shares already pledged [w.r.t. 30-9-2016] to secure Ligare facilities***	*Vol. 168, p. 294*
15-6-2017	***Pledge agreement to create a cross-collateral over 1,42,00,000 FHL shares already pledged [w.r.t. 19-5-2017] to secure DION facility***	*Vol. 170, p. 695*
15-6-2017	***Pledge agreement to create a cross-collateral over 1,42,00,000 FHL shares already pledged [w.r.t. 19-5-2017] to secure DION facility***	*Vol. 170, p. 718*
19-6-2017	*Seventh undertaking before the Delhi High Court by the Respondents*	
21-6-2017	*Eighth undertaking before the Delhi High Court by the Respondents [order under challenge in the present SLP]*	

20-6-2017 — 23-6-2017	*Release of 60,00,000 FHL shares by ABL [w.r.t. 30-9-2016]* *Release of 18,25,000 FHL shares by ABL [w.r.t. 30-9-2016]*	*Vol. 197, pp. 7, 8*
22-6-2017	*SLP (C) 20417/2017 preferred before the Supreme Court against 21-6-2017 Delhi High Court order*	*Vol. 1*
Post 23-6-2017	*ABL continued to hold pledge over 1,83,75,000 FHL shares*	*Vol. 197, p. 9*
11-7-2017	*LVB released 1,00,000 FHL shares on payment of Rs 1.6 crores*	*Vol. 202, p. 3*
17-7-2017	*Ambit issued a loan recall notice to RHC and called upon RHC*	*Vol. 159,*

	to repay entire loan amount with interest	*p. 97*
17-7-2017	*RBL issued a loan recall notice w.r.t. 29-11-2012 facility*	*Vol. 201, p. 7*
18-7-2017	***Pledge agreement to create a cross-collateral over 45,83,333 FHL shares already pledged [w.r.t. 19-5-2017 ABL] to secure RHC holding facility***	*Vol. 167, p. 155*
18-7-2017	***Pledge agreement to create a cross-collateral over 64,16,667 FHL shares already pledged [w.r.t. 19-5-2017 ABL] to secure RHC holding facility***	*Vol. 167, p. 180*
18-7-2017	***Pledge agreement to create a cross-collateral over 10,00,000 FHL shares already pledged [w.r.t. 30-6-2014 & 28-7-2016 ABL] to secure RHC holding facility***	*Vol. 168, p. 204*
18-7-2017	***Pledge agreement to create a cross-collateral over 45,83,833 FHL shares already pledged [w.r.t. 19-5-2017 ABL] to secure Ligare facility***	*Vol. 168, p. 319*
18-7-2017	***Pledge agreement to create a cross-collateral over 64,16,667 FHL shares already pledged [w.r.t. 19-5-2017 ABL] to secure Ligare facility***	*Vol. 168, p. 344*
18-7-2017	***Pledge agreement to create a cross-collateral over 10,00,000 FHL shares already pledged [w.r.t. 30-6-2014 & 28-7-2016 ABL] to secure 30-9-2016 facility***	*Vol. 169, p. 446*
18-7-2017	***Pledge agreement to create a cross-collateral over 45,83,333 FHL shares already pledged [w.r.t. 19-5-2017 ABL] to secure 30-9-2016 facility***	*Vol. 169, p. 470*
18-7-2017	***Pledge agreement to create a cross-collateral over 64,16,667 FHL shares already pledged [w.r.t. 19-5-2017 ABL] to secure 30-9-2016 facility***	*Vol. 169, p. 493*
18-7-2017	***Pledge agreement to create a cross-collateral over 64,16,667 FHL shares already pledged [w.r.t. 19-5-2017 ABL] to secure another 19-5-2017 ABL facility***	*Vol. 170, p. 764*
18-7-2017	***Pledge agreement to create a cross-collateral over 45,83,333 FHL shares already pledged [w.r.t. 19-5-2017 ABL] to secure another 19-5-2017 facility***	*Vol. 170, p. 741*
18-7-2017	*LVB sold 5,00,000 FHL shares and realised Rs 7,44,96,752*	*Vol. 202, p. 4*

18-7-2017	***Cross-collateral over 1,05,50,000 FHL shares [w.r.t. 2-5-2014] to secure LAL facility by YBL (Rs 150 crores)***	*Vol. 173, p. 176*
18-7-2017	***Cross-collateral over 2,57,31,500 FHL shares [w.r.t. 20-2-2015, 5-6-2015, 11-9-2015, 27-11-2015, 15-3-2016, 30-3-2016] to secure LAL facility by YBL (Rs 150 crores)***	*Vol. 174, p. 260*
18-7-2017	***Cross-collateral over 2,65,02,852 FHL shares [w.r.t. 30-3-2016] to secure LAL facility by YBL (Rs 150 crores)***	*Vol. 406, p. 175*
18-7-2017	*Pledge invoked against 5,00,000 FHL shares by LVB*	*Vol. 202, p. 4*
19-7-2017	*Pledge invoked against 2,80,000 + 7,25,000 + 38,95,000 FHL shares by LVB*	*Vol. 202, p. 4*
19-7-2017	*LVB sold 11,00,000 FHL shares and realised Rs*	*Vol. 202,*

	16,61,19,096	*p. 4*
19-7-2017	*LVB sold 10,00,000 FHL shares and realised Rs 15,20,65,630*	*Vol. 202, p. 4*
19-7-2017	*LVB sold 5,50,000 FHL shares and realised Rs 8,29,46,812*	*Vol. 202, p. 4*
19-7-2017	*LVB sold 10,00,000 FHL shares and realised Rs 15,06,83,015*	*Vol. 202, p. 4*
21-7-2017	*RHC repaid Ambit's entire outstanding*	*Vol. 231, p. 2*
21-7-2017	***Pledge over 2,98,15,406 FHL shares recorded in favour of YBL [w.r.t. 30-3-2016, 27-7-2016]***	*Vol. 200, p. 15*
24-7-2017	*Ambit released the pledge over shares of FHL and REL*	*Vol. 231, p. 2*
8-8-2017	*RBL released 2,00,000 FHL shares [w.r.t. 29-11-2012]* *Total no. of encumbered shares of FHL with RBL stood at 38,75,000*	*Vol. 201, p. 7*
10-8-2017	*RBL received Rs 3.20 crores [w.r.t. 29-11-2012]*	*Vol. 201, p. 8*
11-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1973]	*Order by this Court directing status quo w.r.t. shareholding of FHHPL in FHL*	
11-8-2017	*Total FHL shares that stood encumbered in favour of ABL were 1,83,75,000*	*Vol. 228, p. 4*
14-8-2017	*Loan recall notice issued by RBL w.r.t. 27-7-2012 facility*	*Vol. 201, p. 8* *Vol. 23, p. 42*
14-8-2017	*LVB sold 1,00,000 FHL shares and realised Rs 1,49,79,271*	*Vol. 202, p. 4*
14-8-2017	*LVB sold 4,00,000 FHL shares and realised Rs 6,06,50,588*	*Vol. 202, p. 4*
14-8-2017	*LVB sold 3,34,350 FHL shares and realised Rs 5,02,68,887.26*	*Vol. 202, p. 5*
14-8-2017	*LVB sold 65,000 FHL shares and realised Rs 98,60,578*	*Vol. 202, p. 5*
14-8-2017	*LVB sold 1,50,650 FHL shares and realised Rs 2,28,54,809*	*Vol. 202, p. 5*
14-8-2017	*LVB sold 2,00,000 FHL shares and realised Rs 2,99,49,031*	*Vol. 202, p. 5*
14-8-2017	***Pledge created by Indiabulls***	*Vol. 1, LOD filed by*

		Kunal Chhaterji p. 20
31-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1974]	*Order by this Court recording that 11-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1973] order operative w.r.t. encumbered and unencumbered shares of*	
8-2-2018	*Singh Brothers tendered their resignation from the Fortis and Religare Board of Directors*	*Vol. 1, LOD filed by Kunal Chhaterji p. 23*
12-2-2018	*Master Purchase agreement executed in Singapore for acquisition of RHT assets for Rs 4650 crores. It was endorsed by Gurpreet Singh Dhillon on behalf of RHT.*	*Vol. 1, LOD filed by Kunal Chhaterji p. 24*
14-2-2018	*Singh Brothers resigned from the Board of Religare Enterprises Ltd.*	*Vol. 67, p. 33*
15-2-2018 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2018 SCC OnLine SC 3571]	*This Court modified its order and allowed the banks to enforce their pledges created prior to 11-8-2017*	
16-2-2018	*YBL invoked its pledge over 8,97,81,906 FHL shares*	*Vol. 200, p. 16*
20-2-2018	*ABL invoked its pledge over 1,83,75,000 shares*	*Vol. 197, p. 10*
20-2-2018	*RBL sold 33,75,000 shares and realised Rs 47,04,11,504*	*Vol. 201, p. 11*
1-3-2018	*Pledge over 16,500 FHL shares released by Ambit*	*Vol. 101, p. 159*
March' 2018	*Invocation of pledges held by various banks caused fall in shareholding of FHHPL in FHL from 71.7% to 0.66%*	*Vol. 1, LOD filed by Kunal Chhaterji p. 28*
24-5-2018	*RBL sold 80,000 shares and realised Rs 1,14,54,502 RBL left with 4,20,000 shares*	*Vol. 201, p. 11*
Jun-Sep' 2018	*Board of Directors of Religare entities were reconstituted and initiated insolvency proceedings against 23 entities which owed Rs 2300 crores*	*Vol. 227, p. 28*

13-7-2018	***Share subscription agreement executed between FHL and IHH***	*Vol. 1, LOD filed by Kunal Chhaterji p. 36*
24-9-2018	*RHC Holdings' Affidavit informing this Court about violation of 11-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1973] SCI order by IHFL having pledged 12,25,000 shares of FHL*	*Vol. 38*
6-10-2018	*Daiichi filed contempt petition before this Court*	*Vol. 39, p. 5*
29-10-2018	*Daiichi granted permission to file formal intervention application for intervention in NCLT*	*Vol. 119 @ p. 97*
7-12-2018	*Daiichi preferred application for intervention before NCLT*	*Vol. 75 @ p. 10*

17-12-2018	*REL preferred complaint under Sections 210, 212 and 447 of Companies Act, 2013 against Singh Brothers and known associates*	*Vol. 67 @ p. 62*
18-12-2018	*RFL preferred complaint against Singh Brothers and their associates before Economic Offences Wing, Delhi Police — FIR 50/2019*	*Vol.67 @ p. 98*
14-3-2019	*SEBI passed an order consequent to an independent investigation which found large scale diversion of funds from the REL and its subsidiaries at the behest of promoters.* *REL and RFL directed to recall the loans and take recovery steps for entities belonging to promoter group*	*Vol.67 @ p. 145*
22-3-2019	*Complaint preferred by REL against erstwhile promoters and their entities including Oscar Investments Ltd. with EOW, Delhi Police for misappropriation to the tune of Rs 525 crores*	*Vol. 227 @ p. 29*
27-3-2019	*NCLT reserved order in the Daiichi matter*	*Vol. 119 @ p. 106*
5-4-2019 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2019 SCC OnLine SC 2226]	*IA No. 58004/2019 mentioned before SCI and interim stay was granted against NCLT proceedings in favour of Daiichi*	*Vol. 67 @ p. 28*
10-4-2019	*Application for vacation of interim stay dated 5-4-2019 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2019 SCC OnLine SC 2226] preferred by Religare*	*Vol. 67*
8-8-2019	*RFL preferred complaint against OSPL Infradeal Ltd., the Singh Brothers and RHC Holding for misappropriation to the tune of Rs 250 crores — FIR 64/2020*	*Vol. 227 @ p. 29*
11-9-2019	*Vide separate order, SEBI confirmed directions issued by it on 14-3-2019*	*Vol. 75 @ p. 231*
21-9-2019	*RFL preferred complaint against ZEE Group companies, Singh Brothers and RHC Holdings for causing wrongful loss*	*Vol. 227 @ p. 29*

	of Rs 150 crores — FIR 82/2020	
23-9-2019	*FIR 189/2019 registered based on complaint filed by RFL on 15-5-2019*	*Vol. 227 @ p. 30*
15-11-2019 [Vinay Prakash Singh v. Sameer Gehlaut, (2021) 16 SCC 319 : 2019 SCC OnLine SC 1480]	*This Court held Singh Brothers and officials of IFHL guilty of contempt*	*Vol. 226, p. 4*
6-1-2020	*Charge-sheet in FIR 50/2019 filed by EOW*	*Vol. 120 @ p. 131*
3-2-2020	*This Court granted [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2020 SCC OnLine SC 1438] time to Singh Brothers to come up with proposal to purge contempt*	*Vol. 226, p. 5*
23-3-2020	*Charge-sheet in FIR 189/2019 filed by EOW*	*Vol. 121 @ p. 269*
15-10-2020 [Daiichi Sankyo Co. Ltd. v. Malvinder Mohan Singh, 2020 SCC OnLine Del 2551]	*Delhi High Court judgment*	

12-11-2020	*SEBI passed order directing initiation of adjudication proceedings against 10 entities for diversification of funds*	*Vol. 211 @ p. 9*
11-2-2021 [Daiichi Sankyo (P) Ltd. v. Oscar Investments Ltd., 2021 SCC OnLine SC 144]	*Notice issued [Daiichi Sankyo (P) Ltd. v. Oscar Investments Ltd., 2021 SCC OnLine SC 144] to lenders — Banks and financial institutions by this Court*	
18-2-2021	*Questions posed to lenders by this Court [18-2-2021 [Daiichi Sankyo (P) Ltd. v. Oscar Investments Ltd., (2021) 16 SCC 310 : 2021 SCC OnLine SC 112] order]*	

(emphasis supplied)

33. The list of dates shows that on one hand assurances were being given to this Court by the JD No.1 & 6, and on the other hand the shares were also being encumbered against loans taken by downstream companies of the said JDs. It has not been tendered to this Court as to what exactly is the nature of business of these downstream companies, or why such loans were taken.

The list of dates reflects that the shares of FHL held by JD No. 1 and 6 through their various subsidiaries, were being reduced contrary to the assurances given to this Court. This is also evident from Paragraph 27 of the Apex Court's Judgment in Vinay Prakash Singh (supra). The chart shows that 5,29,31,574 unencumbered shares were brought down to 26,31,777 shares even after the status quo orders passed by the Apex Court.

34. This Court is firmly of the view that it refrained from issuing attachment orders against the Judgment Debtors solely in reliance upon the assurances of the Learned Senior Counsels of JDs that FHHPL's unencumbered shares would be preserved to satisfy the decree. Had it not been the case, this Court would have definitely passed attachment orders directing the Judgment Debtors to deposit the money. This Court has, therefore, been taken for a complete ride. The Judgment Debtors have successfully pulled the wool over the eyes of this Court by engaging in a calculated and systematic dissipation of assets over a period of time, as is unequivocally borne out from the chart reproduced hereinabove.

35. It came to the knowledge of the Apex Court that even after the imposition of *status quo* order, unencumbered shares of FHL held by FHHPL had been dealt with by the Judgment Debtors and certain financial institutions. The Apex Court observing that these transactions were in direct contravention of the *status quo* order, initiated contempt proceedings against them.

36. The Apex Court in Vinay Prakash Singh (*supra*) has commented on the conduct of the Judgment Debtors and the various violations**.** The relevant portion of the said Judgment reads as under:-

*"**28.** 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 out above, on 19-6-2017 the 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 6-3-2017 [Daiichi Sankyo Co. Ltd. v. Malvinder Mohan Singh, 2017 SCC OnLine Del 12874] 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.

***29.** 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.*

***30.** This Court on 11-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1973] directed that status quo with regard to shareholding of Fhhpl in FHL be maintained. On 31-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1974] it was clarified that the order would apply to both encumbered and unencumbered shares. On 14-8-2017, 30,59,260, unencumbered shares were pledged in favour of IHFL. As far as this violation of the order dated 11-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1973] is concerned, in view of the order dated 31-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1974] , the same stands condoned. This would further* *mean that the unencumbered shares should have been reduced to 3,52,55,957.*

31.** **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 14-8-2017, 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.

***32.** 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 14-8-2017.*

33. This brings us to the shareholding pattern of FHL for the period between 1-7-2018 and 30-9-2018 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 IA No. 109493 of 2017 nor in the reply filed by Contemnors 1 to 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 14-8-2017. According to alleged Contemnors 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 11-8-2017 by Fhhpl to IVL and IHFL. These transfers were done on the basis of

the delivery instruction 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 11-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1973] clearly debars Fhhpl from changing its shareholding in IHFL. Vide order dated 31-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1974] , it was clarified that the order dated 11-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1973] would apply both to encumbered and unencumbered shares. It was only on 15-2-2018 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2018 SCC OnLine SC 3571] that the order was clarified that it would not apply to shares encumbered prior to 11-8-2017 and 31-8-2017.* ***A reading of the 3 orders makes it clear that no unencumbered shares could be charged after 31-8-2017 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 31-8-2017 were obviously unencumbered shares prior to this date. The plea is clearly unacceptable and a lame excuse for the wilful disobedience of the order [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1973] 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.*

34. 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 30-6-2018, 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 30-9-2018 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 31-3-2018, the encumbered shares were much below 12,25,000.

35. 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 31-8-2017.

36. 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. Contemnors 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 Contemnors 1 to 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.

37. *We afford an opportunity to Contemnors 1 to 8 to purge themselves of the contempt by depositing the value of 12,25,000 shares as on 31-8-2017 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.*

38. *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 Contemnors 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.*

39. 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 24-5-2016 when they assured the High Court of Delhi that any dealings made by them would not affect the rights of the petitioners. As on 30-9-2016, 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 21-6-2017 to the High Court of Delhi, unencumbered shares were encumbered or transferred as is apparent from the above table.

40. *The petitioner came to this Court when the order dated 11-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1973] was passed and clarified by order dated 31-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1974] . 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 14-8-2018. 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 19-6-2017 and 21-6-2017 would be maintained. On 11-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1973] , this Court injuncted the respondents from changing the shareholding. On 11-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1973] , this Court passed the order of status quo referred to above. Despite that specific order, on 14-8-2017 a pledge was created. This was a violation of the orders of this Court. RHC and OIL filed applications before this Court on 21-8-2017 praying for modification of the order and for a direction that the order dated 11-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1973] may be limited to the shares other than those which already stood pledged to banks and* *financial institutions. Though separate applications have been filed, Para 25 of both the applications are identical and has been quoted hereinabove.*

41. *These applications were filed on affidavit and it has held out to this Court that if the order dated 11-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1973] 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 31-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1974] was passed and this Court took a lenient view on the matter and disposed of the contempt without taking any action.*

42. 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.

43. *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.*

44. *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 insofar as the undertakings made before it are concerned.* ***We have no doubt in our mind that Contemnors 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 stakeholder 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.***

45. *No person or institution howsoever powerful, can be permitted to misuse the process of the court. Contempt of court can be committed in various ways. Civil contempt is defined under the Contempt of Courts Act, 1971 under Section 2(b) to mean wilful disobedience of any judgment, decree, direction, order of the Court, of wilful breach of an undertaking given* *to the Court. Criminal contempt has been defined under Section 2(c) to include anything which 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.*

46. *As far as the present case is concerned, the conduct of Contemnors 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 Contemnors 9 and 10 have successfully avoided paying off the petitioner. In our view, action for committing criminal contempt could have been taken against Contemnors 9 and 10, but by taking a lenient view of the matter we are only treating it as a civil contempt.*

47. *The order passed by this Court on 11-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1973] with a clarification on 31-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1974] , and modification made on 15-2-2018 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2018 SCC OnLine SC 3571] , 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 21-6-2017. 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 para 27.* ***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.***

48. What is even more shocking and clearly contemptuous is the manner in which, in a well thought out 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 4600 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 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.

***49.** 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 to be adhered to.*

***50.** 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 11-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1973] , 31-8-2017 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2017 SCC OnLine SC 1974] and 15-2-2018 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2018 SCC OnLine SC 3571] . They are accordingly held guilty of committing contempt of court. We shall hear them on the question of sentence. We give one chance to Contemnors 9 and 10 to purge themselves of the contempt.*"

(emphasis supplied)

37. JD No. 1 and 6 were provided with an opportunity to purge themselves of the contempt by making a deposit of Rupees 1170.95 crores before the Apex Court within eight weeks from the date of Judgment dated 15.11.2019.

38. The contempt proceedings were thereafter finally dealt with by the Apex Court on 22.09.2022 in Daiichi Sankyo Company Limited v. Oscar Investments Limited & Ors., **(2023) 7 SCC 641**, wherein the Apex Court has come to the conclusion that the Judgment Debtors kept dissipating the

unencumbered shares despite various undertakings which depleted the asset base to satisfy the decretal amount. The banks and financial institutions also filed various affidavits to show that they had not violated the undertaking given to this Court and the Apex Court. The Apex Court thereafter summarised the questions that arose for consideration. The JD No. 1 and 6 were given a chance to purge themselves of contempt, however, on failure to do so, they were sent to six months of imprisonment. The relevant portion of the Judgment passed by the Apex Court in Daiichi Sankyo Company Limited v. Oscar Investments Limited & Ors., **(2023) 7 SCC 641,** reads as under:-

> *"**31.** In the backdrop of these submissions, following questions arise for our consideration:*
>
> ***31.1.** Whether the acts of commission or omission on part of Contemnors 9 and 10 and the entities controlled by them, were calculated to put the assets of the companies under their control beyond the reach of Daiichi?*
>
> ***31.2.** Having given clear assurances to the High Court and this Court, whether such acts of commission and omission on part of Contemnors 9 and 10 amount to contempt of the orders passed by the High Court and this Court?*
>
> ***31.3.** Whether the banks and financial institutions sold the shares which were pledged with them, purely as a matter of commercial expediency or whether there was any deliberate act of defiance to defeat the rigour and width of the orders passed by the High Court and this Court?*
>
> ***31.4.** Whether the acts committed by them were in*

connivance with Contemnors 9 and 10?

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

39. The Apex Court after sentencing the Judgment Debtors, directed as under:-

*"**32.** The first two questions raised hereinabove need no further elaboration as the conduct of Contemnors 9 and 10 was considered and they were held guilty of having committed contempt of the orders passed by the High Court and this Court. While holding them guilty, by its judgment and order dated 15-11-2019 [Vinay Prakash Singh v. Sameer Gehlaut, (2021) 16 SCC 319 : 2019 SCC OnLine SC 1480] this Court had given them an opportunity to purge themselves of contempt. Therefore, insofar as the role played by Contemnors 9 and 10 is concerned, the matter rests in a narrow compass i.e. whether they have purged themselves of contempt or not? The kind of assets that have been offered by said Contemnors 9 and 10 in their affidavit are so inadequate that it is impossible to satisfy the amount awarded in favour of Daiichi in the foreign arbitral award. We are, thus, left with no alternative but to hold that said Contemnors 9 and 10 have failed to purge themselves of contempt. As a matter of fact, there is no genuine attempt on their part. The question then comes up is about the quantum of sentence. Considering the enormity of their actions, in our view, the maximum sentence that can be awarded, must be imposed. We, therefore, sentence them to suffer six months imprisonment and impose fine of Rs 5000 for having committed contempt of court with default sentence of two months.*

33. ***That takes us to the next set of questions regarding the role played by the noticee banks and financial institutions. With the assistance of the learned counsel appearing for the parties we made an attempt to go through the documents placed on record but find ourselves unable to come to a definite conclusion whether there were antecedent arrangements which enabled said banks and financial institutions to keep attaching the shares and keep on converting large quantity of shares from the compartment of "unencumbered shares" to that of "encumbered shares" and thereafter keep disposing of said shares.***

34. We are also unable to come to a clear conclusion whether all those actions were protected by the order dated 15-2-2018 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2018 SCC OnLine SC 3571] passed by this Court enabling the banks and financial institutions to sell encumbered shares. This exercise will require going into issues of fact, comparing of the documents and accounts as well as considering the expediency whether the shares were required to be sold in order to keep affording comfort and sufficient security to said banks and financial institutions.

35. ***It is true that it is possible for a court, while exercising jurisdiction in contempt, to pass consequential orders in the nature of sequestration orders to secure the properties which the contemnor had put beyond the reach of the court or which were acquired by the contemnor for himself or for any other person or entity by his wrongful acts. But there are two difficulties to undertake such exercise in contempt jurisdiction in the present matter. First, these noticees were not parties to the initial proceedings in this Court. Secondly, they have come***

up with a defence that all their acts were purely commercial in nature and it was the expediency of the situation which demanded such actions on their part. These issues need to be gone into at the appropriate stage(s). But before reacting that level, a factual analysis in the form of forensic audit as suggested by Daiichi is also required to be undertaken. Such exercise will certainly help the court in arriving at an appropriate conclusion and in passing appropriate orders or directions. We, therefore, refrain from passing any directions against the said banks and financial institutions for the present but observe that the executing court or any other authority competent to exercise such power shall do well to appoint foreign auditor(s) to undertake proper exercise to unravel the truth.

36. Insofar as the issues concerning the acquisition of proprietary interests in hospitals and diagnostics centres at a price of Rs 4666 crores by FHL is concerned, facts on record are not quite adequate to enter into such arena. Prima facie, it appears to be acquisition of proprietary interest to subserve the business structure of FHL as suggested by IHH/NTK. But again, that is a matter to be enquired into and facts to be assessed in the light of any forensic analysis, if the court so deems appropriate.

37. *In the premises we pass the following directions:*

37.1. *Contemnors 9 and 10 are sentenced to suffer six months' imprisonment and pay fine in the sum of Rs 5000 each within four weeks from today. In case of default of payment of fine, the contemnors shall undergo further imprisonment of two months.*

37.2. *Special Leave Petition (Civil) No. 20417 of 2017, Contempt Petition No. 2120 of 2018 in SLP (C) No.*

20417 of 2017 and Suo Motu Contempt Petition (C) No. 4 of 2019 are disposed of with a direction to the High Court, before whom the proceedings in execution are pending, to consider appointment of foreign auditor(s) to analyse the transactions entered into by the noticee banks and financial institutions and to look into whether such transactions were bona fide and entered into in commercial expediency.

37.3.** **The executing court may also consider issuing appropriate process and appointing foreign auditor(s) to analyse the transactions entered into between FHL and RHT and other related transactions.

***37.4.** The amount of Rs 17,93,40,000 which stands deposited in the Registry of this Court shall be transmitted to the executing court along with interest accrued thereon. The said amount shall be available to the executing court while considering execution of the instant foreign arbitral award.*

***37.5.** Certain shares which are still lying with the noticee banks and financial institutions, for example, the shares of FHL pledged with and continued to be held by RBL Bank which were dealt with in the order dated 15-4-2021 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2021 SCC OnLine SC 3371] passed by this Court, shall be available to the executing court and shall abide by such order as the executing court may deem appropriate to pass.*

***37.6.** All the properties offered by Contemnors 9 and 10 in their attempt to partially purge themselves of contempt shall also be available to the executing court and shall abide by such directions as the executing court may deem appropriate to pass. Consequently, there shall be attachment of all those assets which may await the decision or direction to be passed by the* *executing court in due course of time which may also include the questions whether the assets in question apparently in the names of certain persons/entities can be proceeded against.*

37.7. *Needless to say that it shall be open to the executing court to pass such directions as the facts and circumstances presented before it may justify.*

37.8. *All pending proceedings before the concerned courts, including the first information reports and proceedings before NCLT shall be taken to logical conclusion in accordance with law.*

37.9. *The Registry shall send copies of all volumes, submissions and pleadings filed by the parties in the instant matters to the executing court for facility and record."*

(emphasis supplied)

40. In pursuance to these directions and since all the records have been transmitted to this Court, the applications for such forensic audits is also before this Court for consideration.

41. EX. APPL.(OS) 3764/2022 has been filed by the Decree Holder seeking appointment of Forensic Auditor in terms of the directions passed by the Apex Court in its Judgment dated 22.09.2022 passed in SLP(C) No.20417/2017, Contempt Petition (C) No.2120/2018 and SMC(C) 4/2019.

42. EX.APPL.(OS) 1615/2025 has been filed by the Decree Holder under Order XIII Rule 1 of the CPC for bringing on record certain additional documents to demonstrate as to how the Judgment Debtors have taken steps to fritter away the amounts available with them on the date when the decree was passed to defeat the decree.

43. EX. APPL.(OS) 3763/2022 has been filed by the Decree Holder seeking appointment of Forensic Auditor in respect of 17 banks and financial institutions.

SUBMISSIONS OF MR. ARVIND NIGAM, LEARNED SENIOR ADVOCATE FOR THE DECREE HOLDER

44. The principal attack of the Decree Holder is on the complicity and connivance of FHL in its erstwhile *avatar*, that is, when JD No. 1 and 6 were at the saddle and at the helm of affairs of FHL. It is the case of the Decree Holder that the Apex Court in the aforesaid two Judgments, i.e., Vinay Prakash Singh v. Sameer Gehlaut & Ors., **(2021) 16 SCC 319** and Daiichi Sankyo Company Limited v. Oscar Investments Limited & Ors., **(2023) 7 SCC 641,** has held that JD No. 1 and 6 have wilfully and contumaciously violated the undertakings given to this Court and acted in contravention to the Orders of the Apex Court.

45. It is stated by the Learned Senior Counsel for the Decree Holder that the present execution proceedings instituted by the Decree Holder has been pending for almost a decade. Notably, when the Decree Holder initiated the present proceedings in 2016, the Judgment Debtors had a significant net worth which was much more than the decretal amount. The decretal sum due to the Decree Holder was a principal sum of Rs. 2,562 crores, with further additional pre-award interest (4.44%) and post-award interest (5.33%), aggregating to more than Rs. 5200 crores as on date. However, even though 9 years have passed, the Decree Holder has only been able to recover approximately Rs. 250 crores; and in a stunning and extremely frustrating turn of events, the entire net worth of the Judgment Debtors has vanished into thin air in contemptuous disregard of undertakings proffered to this

Court.

46. He states that the major bulk of the net worth of the Judgment Debtors were the unencumbered shares indirectly owned by the Judgment Debtors in two listed entities, namely FHL and M/s. Religare Enterprises Limited ("REL"). It is stated that in September 2016, the Judgment Debtors, and more specifically JD No. 14 and JD No. 19, owned the controlling stake in FHL, through their wholly owned subsidiary, FHHPL. The Apex Court noted in Vinay Prakash Singh (*supra*) between September 2016 and December 2018, the shareholding of the Judgment Debtors in FHL (specifically the unencumbered shares) declined from 5.29 crore shares to 6.01 lakh odd shares. He states that this reduction in shareholding has been characterized by the Apex Court in paragraph 44 of the Vinay Prakash Singh (*supra*) as having "vanished into thin air".

47. The Learned Senior Counsel states that it is precisely this disappearance of nearly 5.29 crore unencumbered FHL shares, which otherwise would have been capable of substantially satisfying the decree under execution, that forms the premise of the present applications of the Decree Holder seeking forensic audit. He states that these shares were ostensibly made available to the Decree Holder and were the subject matter of six express undertakings made to this Court. It is the case of the Decree Holder that pursuant to the undertakings, these 5.29 crore unencumbered FHL shares were sequestered in favour of the Decree Holder, were custodia legis, and the dissipation of these shares with the active abetment of FHL represents an act seeped in contempt.

48. The Learned Senior Counsel argues that the six undertakings given to this Court constituted as an unfractured thread which also acted as injunction

orders against the Judgment Debtors to not alienate the shareholding in FHL held by them through FHHPL.

49. He states that this Court by its Judgment dated 24 April 2023 in E.A. 3651/2022 has made observations on the violation of the orders by the Judgment Debtors by stating as under:-

> *"67… Those five assurances and the injunction orders of the Supreme Court constitute an unfractured thread forming part of Daiichi's efforts to enforce the Foreign Award.* ***It must also be noted that the shares in question came to be sequestered in terms of directions and injunctions issued by this Court as well as the Supreme Court in relation to the Foreign Award only. The shareholding of FHHPL in FHL was directed to be maintained as frozen at levels prevailing on the date of the orders passed for the purposes of satisfaction of the foreign award. The attenuation of shareholdings in FHL resulting from the sale of those shares was in apparent violation of the sequestration orders. Any claims which could have been possibly asserted by any third party thus stood eclipsed by virtue of those orders. Those orders were essentially aimed at tackling the looming threat of dissipation of assets by the JD's and for ensuring that these assets do not fall outside the reach of Daiichi during the pendency of the enforcement proceedings relating to the foreign award."***
>
> *(emphasis supplied)*

50. It is stated that FHL was fully aware of the fact that the Singh Brothers, who were indirectly holding the controlling equity of FHL, had suffered a decree for recovery of an amount, aggregating to over Rs. 5200 crores (including interest) as on date. The Learned Senior Counsel states that it is noteworthy that the Judgment Debtor No. 1 was the Managing Director

and Chairman, while his brother, Judgment Debtor No. 6, was the Director and Vice- Chairman of FHL till February 2018. Therefore, FHL had knowledge of all the undertakings given to this Court by its directors.

51. He states that FHL is a company which is listed on both the National Stock Exchange (‘**NSE**’) and the Bombay Stock Exchange (‘**BSE**’). The underlying premise of listing a company on the stock exchange is to make available its shares to the investing public for the purpose of sale and purchase. To ensure that fairness and transparency are maintained in the securities markets, the main function of the regulator, i.e., the Securities and Exchange Board of India (“SEBI”), is to maintain information parity so as to ensure that each member of the investing public has access to the same information as the other. An action premised on knowledge which is secretive would give an unfair advantage to the possessor of such knowledge as against other members of the investing public; and thus, any such action would be to the detriment of others.

52. He states that since FHL is a listed company, timely disclosures by listed entities to the stock exchanges and the requirement to ensure that those persons who are designated as the promoters of a company act in a manner which is not unfair to or in detriment of the investing public becomes mandatory. SEBI Prohibition of Insider Trading Regulations, 2015 (“**PIT Regulations**”), SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**SAST Regulations**”) are the subordinate legislations to regulate best practices by a listed company and their promoters.

53. The PIT Regulations mandate that all listed entities must have a policy to prevent insider trading. The PIT Regulations require the board of

directors of every listed company to ensure that the chief executive officer or managing director formulates a code of conduct with the approval of the board to regulate, monitor and report trading of securities by its designated persons and immediate relatives of designated persons. It is submitted that Regulation 9(4)(iii) of the PIT Regulations provides that all promoters of listed companies are covered under the scope of the term 'designated persons' and are bound by the code of conduct formulated for that company. It is submitted that the purpose of formulating such policy is to achieve compliance with, and adopt the minimum standards set out in, the PIT Regulations, without diluting the provisions of these regulations in any manner. FHL has formulated a code of conduct for prevention of insider trading of FHL shares, i.e., the FHL Policy in accordance with Regulation 8 of the PIT Regulations, which has been effective since 15 May 2015, and was last reviewed on 10 November 2023. The PIT Regulations further require that the listed company formulating a code of conduct must identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations. It is stated that FHL has appointed the Company Secretary of FHL as the Compliance Officer.

54. He states that in the present case, notably, as per Clause 6 of Schedule B of the PIT Regulations read with paragraph 3.2.5 of the FHL Policy, any transfer or trading of securities by designated persons, including promoters, requires prior approval from the company. In other words, Judgment Debtors could not have sold/transferred/pledged/alienated FHL shares owned by them, without obtaining express pre-clearance from FHL, the company in which they held shares. It is submitted that the policy laid down by FHL has not been followed and FHL.

55. Learned Senior Counsel further submits that the Code of Conduct framed by FHL under the PIT Regulations establishes a structured mechanism for monitoring trades undertaken by designated persons. It was submitted that the Company Secretary, or such other person as may be designated by the Board of Directors, functions as the Compliance Officer and is entrusted with the responsibility of supervising the implementation of the Code, granting pre-clearance for trades, maintaining records of such approvals and reporting compliance to the Board of Directors on a quarterly basis. According to the learned Senior Counsel, where the aggregate value of the proposed trades by a designated employee exceeded Rs. 10,00,000 in a calendar quarter, the designated employee was required to obtain prior approval from the Compliance Officer before executing the transaction. Upon receipt of an application for pre-clearance, the Compliance Officer was required to examine the request and communicate approval or rejection within one trading day. If approval was granted, the designated employee was required to execute the trade within seven trading days, failing which a fresh pre-clearance was necessary. It was further submitted that, irrespective of whether the approved trade was executed or not, the designated employee was obligated to furnish the prescribed disclosures regarding execution, non-execution and the extent of holdings in the securities of FHL within seven trading days in the prescribed format. Thus, according to the learned Senior Counsel, the Code of Conduct contemplated a comprehensive compliance framework requiring prior scrutiny of trades, post-trade reporting and continuous oversight by the Compliance Officer, who was, in turn, accountable to the Board of Directors.

56. He states that the afore-mentioned sequence of steps demonstrates

that the only way in which the Judgment Debtors could have been able to dissipate the 5.29 crore unencumbered shares was with the abetment, complicity and collusion of FHL. The Decree Holder after reviewing each public disclosure has prepared a table, giving a set of about 139 transactions wherein pledges have been created by FHHPL post the assurances given to the Court. This demonstrates that shares which were unencumbered on the date when the assurances were given, were later on encumbered by FHHPL, which is the *alter ego* of JD No.1 and 6, and these unencumbered shares have been transacted without following the policy as prepared by FHL in consonance with the regulatory regime made by SEBI. He states that these transactions could not have been permitted by the compliance officer in view of the undertakings of JD No.1 and 6. On one hand the Judgment Debtors were giving assurances to this Court and whereas on the other hand they were transacting shares in violation of the undertakings.

57. Learned Senior Counsel for the Decree Holder further submitted that the sale, pledge, invocation of pledge and other dealings in the promoter shareholding of FHL are not matters of speculation but are borne out from statutory disclosures mandated under the SEBI regulatory framework and the depository mechanism. According to the learned Senior Counsel, these disclosures emanate from four independent statutory and regulatory sources, each of which captures different facets of the transactions undertaken by the Judgment Debtors through FHHPL.

58. First, reliance was placed on Regulation 29(2) of the SAST Regulations, which mandates every promoter or member of the promoter group to disclose any change in its shareholding amounting to two per cent or more of the total shareholding or voting rights. It was submitted that

every creation of pledge, invocation of pledge, creation of top-up security or sale of shares crossing the prescribed threshold was disclosed by FHHPL to FHL and the stock exchanges in accordance with the said Regulations. These disclosures, commonly referred to as the SAST Disclosures, were thereafter published by FHL on BSE and NSE. Learned Senior Counsel submitted that the Decree Holder has collated all such disclosures evidencing the progressive reduction in the promoter shareholding.

59. Second, reliance was placed on Regulation 7(2)(b) of the PIT Regulations, which obligates a listed company to disclose to the stock exchanges every transaction undertaken by its promoters where the value of such transaction exceeds ₹10 lakhs. It was submitted that, in compliance with the PIT Regulations, FHL itself issued disclosures to the stock exchanges recording transactions undertaken by the promoter entities, including the creation and invocation of pledges as well as the sale of shares. These disclosures, referred to as the PIT Disclosures, were published by FHL under its scrip on the BSE and NSE. Learned Senior Counsel submitted that, since the monetary threshold under the PIT Regulations is considerably lower than the threshold prescribed under the SAST Regulations, the PIT Disclosures capture a substantially larger number of transactions than the SAST Disclosures.

60. Third, reliance was placed on Regulation 31(1)(b) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (‘**LODR Regulations**’), which requires every listed company to disclose its shareholding pattern on a quarterly basis. According to the learned Senior Counsel, these disclosures, regularly published by FHL, reflect the changing promoter shareholding, constitute the very disclosures referred to by the

Apex Court in paragraph 27 of its judgment in Vinay Prakash Singh (*supra*).

61. Lastly, learned Senior Counsel submitted that, independent of the aforesaid statutory disclosures, the depository framework itself provides a continuous source of information regarding changes in beneficial ownership. Reliance was placed on Clause 12.4.4 of the NSDL Business Rules and Clause 6.22 of the CDSL Operating Instructions, under which the National Securities Depository Limited (‘**NSDL**’) and the Central Depository Services (India) Limited (‘**CDSL**’) furnish Beneficial Position (BENPOS) statements to listed companies. It was submitted that these BENPOS statements periodically inform the issuer company of changes in the holdings of its shareholders, thereby enabling reconciliation of the Register of Members with the records maintained by the depositories. According to the learned Senior Counsel, these records constitute an additional and independent source for tracing the movement of the promoter shareholding during the relevant period.

62. The Learned Senior Counsel states that in order to ascertain the conduct of JD No. 1 and 6, the Decree Holder has analysed the SAST disclosures; the PIT disclosures and correlated the same to paragraph 27 of the 2019 Apex Court Judgment in Vinay Prakash Singh (*supra*).

63. He states that the JD No. 1 and 6 had a total of 32,50,91,529 shares in FHL through FHHPL in September 2016. This entire 32.5 crore shareholding has vanished. These shares can be further divided into encumbered shares and unencumbered shares. The encumbered shares were sold by the Financial Institutions and the unencumbered shares were sold by JD No. 1 and 6. He states that out of 32.5 Crore total shares of FHL held by FHHPL; the banks have sold around 18 crore by invoking pledges and the

JD No. 1 and 6 have sold around 14 crore shares.

64. He states that there are different and specific disclosures for the creation of a pledge of shares, for sale by the Bank, and for sale by the JDs through FHHPL which can be reviewed and ascertained after document perusal to identity the exact nature of transaction.

65. He states that JD No. 1 and 6 sold some 14 crore unencumbered shares. Of those 14 crore unencumbered shares sold, some 3.25 crore unencumbered shares correspond to the Apex Court identified number of missing unencumbered 3.26 crore shares. The following table was provided by the Decree Holder in their written note tendered to this Court:

Table A: References to the 11 Transactions mentioned in DH: A1

S. No.	Date of Transaction	Nature of Transaction	Number of Shares Disposed	Disclosure under PIT Regulations	Disclosure under SAST Regulations
1.	03.07.2017	Disposal	11,92,563	**DH: A4, Disclosure reported to exchange on 06.07.2017 @Pg. 87**	**Disclosure not available as threshold not triggered.**
2	07.07.2017	Disposal	4,00,000	**DH: A4, Disclosure reported to exchange on 12.07.2017 @Pg. 87**	**Disclosure not available as threshold not triggered.**
3	12.07.2017	Disposal	1,93,000	**DH: A4, Disclosure reported to exchange on 17.07.2017 @Pg. 85**	**Disclosure not available as threshold not triggered.**
4	14.07.2017	Disposal	10,00,000	**DH: A4, Disclosure reported to exchange on 20.07.2017 @Pg. 85**	**Disclosure not available as threshold not triggered.**

5	18.07.2017	Disposal	54,00,000	**DH: A4, Disclosure reported to exchange on 14.08.2017 @Pg. 83**	**Disclosure not available even though the threshold was triggered**
6	18.07.2017	Disposal	1,31,50,000	**DH: A4, Disclosure reported to exchange on 21.07.2017 @Pg. 84**	**DH: A4, Disclosure dated 20.07.2017 @Pg. 126-129** **NOTE:** The disclosure states that the number of shares transferred is **1,35,09,330**.
7	25.07.2017	Disposal	17,25,000	**DH: A4, Disclosure reported to exchange on 27.07.2017 @Pg. 84**	**Disclosure not available as threshold not triggered.**
8	26.07.2017	Disposal	18,08,000	**DH: A4, Disclosure reported to exchange on 31.07.2017 @Pg. 83**	**Disclosure not available as threshold not triggered.**
9	27.07.2017	Disposal	20,00,000	**DH: A4, Disclosure reported to exchange on 31.07.2017 @Pg. 84**	**Disclosure not available as threshold not triggered.**
10	08.08.2017	Disposal	1,95,000	**DH: A4, Disclosure reported to exchange on 11.08.2017 @Pg. 83**	**Disclosure not available as threshold not triggered.**

11	10.08.2017	Disposal	54,62,411	**DH: A4, Disclosure reported to exchange on 14.08.2017 @Pg. 83**	**DH: A4, Disclosure dated 14.08.2017 @Pg. 130-133**
TOTAL			**3,25,25,774 [representing 99% of the SC identified number of 3,26,24,180 missing unencumbered shares]**		

66. He states that as per the PIT disclosures JD No. 1 and 6 have sold a total of 13.99 Crore unencumbered shares since the first assurance. As per the SAST disclosures JD No. 1 and 6 have sold a total of 6.92 Crore unencumbered shares since the first assurance. He states that this 6.92 Crore shares is a part of/ included within the 13.99 crore unencumbered shares. The Learned Senior Counsel for the Decree Holder then asserts that JD No. 1 and 6 have brazenly violated all assurances tendered to this Court and sold their unencumbered shares in FHL held through FHHPL with connivance of FHL being the directors of FHL.

67. The Learned Senior Counsel states that a forensic audit would be necessary to uncover the transactions undertaken by the JDs in connivance with FHL. It is also stated by the learned Senior Counsel for the Decree Holder that these audits would be necessary to enable the executing court to make good the amounts from FHL.

68. The Learned Senior Counsel for the Decree Holder draws the attention of this Court to various judicial pronouncements to contend that a third party who might not be bound by an order of injunction, cannot aid and abet thwarting of an injunction and such a conduct will be considered as interference in the administration of justice. He places reliance on Seaward v

Paterson **(1895-99) All ER 1127**; Sita Ram vs. Balbir **2017 (2) SCC 456**; Central Depository Services (India) Private Limited v. Rajendra Yeshwant Shah and Ors, **2025 SCC OnLine Bom 2872**.

69. He states that while an injunction is inherently a remedy *in personam*, the Court possesses a historically well-settled contempt jurisdiction against third parties who, despite not being original parties, possess knowledge of the injunction and wilfully aid and abet its violation.

70. He states that FHL was aware of the orders of this Court as the Judgment Debtors were Chairman and Vice-Chairman of FHL holding controlling stake in the company. Despite holding knowledge of the assurances and the status quo orders, FHL aided and abetted the JDs in dissipating their shareholding.

71. He states that it is now a settled proposition of law that an undertaking given by a party is equivalent to an order of injunction. Learned Senior Counsel places reliance on the judgment of the Apex Court in Noorali Babul Thanewala vs. K.M.M. Shetty and Ors. **(1990) 1 SCC 259** wherein the Apex Court held that a breach of an undertaking by a party is tantamount to a breach of injunction. He states that this position has been reiterated in Balwantbhai Somabhai Bhandari v. Hiralal Somabhai Contractor, **2023 SCC OnLine SC 1139**.

72. He states that it is further a well settled principle of law that an order of injunction in an application for execution is equivalent to an order of attachment as has been held by the High Court of Calcutta in Madvai Ahluwalia vs. Vimal Kumar Gupta and Ors. **2012 SCC OnLine Cal 2193**, wherein the Court observed that *"therefore, an order of injunction in an execution application is an order of attachment."*

73. He states that Section 64 of the Code of Civil Procedure, 1908 (‘**CPC**’) mandates that any private alienation of such an attached property is void with the exception for a private transfer which was made pursuant to a contract entered into and registered prior to the attachment.

74. He states that the shares of FHL held by JD No. 1 and 6 through FHHPL were the subject matter of undertakings given to this Court. That being the case, the shares stood injuncted for the benefit of the Decree Holder. An injunction in an execution proceeding is equivalent to an attachment and in this case, the undertaking/injunction was in execution proceedings. Therefore, pursuant to the six undertakings, the shares were not only injuncted but also attached in favour of the Decree Holder. He thus states that Section 64 of the CPC would come into effect and any private alienation would be void unless the said alienation was protected by Section 64(2) of the CPC.

75. In the present case, the sequestered shares are today held by many retail investors who have purchased shares from the stock exchange following the contemptuous acts of the Judgment Debtors who were in turn aided and abetted by FHL. The forensic audit could, therefore, establish the role played by FHL in aiding and assisting the Judgment Debtors to consciously violate the undertakings offered to this Court, based on which the Court can then issue consequential directions such as disgorgement, in terms of the observations made by the Apex Court in Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd. **(2023) 7 SCC 641.**

76. The Learned Senior Counsel for the Decree Holder states that the CPC, is a handmaid to substantive justice. The High Court of Allahabad, through Justice Mahmood, in Narsingh Das vs. Mangal Dubey reported as

ILR (1883) 5 All 163 observed that:

> "*Courts are not to act upon the principle that every procedure to be as prohibited unless it is expressly provided for by the Code but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle, prohibition cannot be presumed*".

77. He states that the said principle has been reiterated by the Full Bench of the Allahabad High Court in Raj Narain Saxena vs. Bhim Sen, **AIR 1966 All 84** and by the Apex Court in Rajendra Prasad Gupta vs. Prakash Chandra Mishra, **(2011) 2 SCC**. He states that the CPC is an ongoing statute which should be interpreted purposively to give effect to the original legislative intention.

78. He argues that the Apex Court has consistently reiterated that the purpose of execution proceedings is to enable the Decree Holder to obtain the fruits of his decree and even if there is any ambiguity, any interpretation which assists the Decree Holder should be accepted. Reference is drawn to Deep Chand vs. Mohan Lal, **(2000) 6 SCC 259**.

79. The Learned Senior Counsel states that considering these fundamental principles, the Decree Holder submits that this Court possesses the power and jurisdiction under the CPC to ensure restitution to the Decree Holder from FHL. The power of this Court to order such restitution from FHL can be traced to Order XXXIX Rule 2A, Section 51(e), and Section 144 read with Section 151 of the CPC. Alternatively, it is submitted that in these unique facts and circumstances this Court can array FHL as a Judgment Debtor to the present execution proceedings in terms of Section 145 of the CPC.

80. He states this Court, exercising powers under Order XXXIX Rule 2A read with Section 151 of the CPC, possesses the inherent jurisdiction to preserve its majesty and mandate the restoration of the *status quo ante*, a legal position affirmed in Century Flour Mills vs. S. Suppiah **AIR 1975 Mad 270**, Sujit Pal vs. Prabir Kumar Sen **AIR 1986 Cal 220**, Vidya Charan Shukla vs. Tamil Nadu Olympic Association **1991 SCC OnLine Mad 3**, Satyabrata Biswas and Ors vs. Kalyan Kumar Kisku **(1994) 2 SCC 266**.

81. It is stated by the Learned Senior Counsel for the Decree Holder that while the Court has the power to restore the exact *status quo ante*, the 5.29 crore unencumbered FHL shares are now held by unsuspecting members of the general public; therefore, to protect these innocent third parties, the Court should instead facilitate restitution by directing FHL to remit the current market value of the said 5.29 crore shares.

82. He states that the inherent equitable power of restitution aims to achieve complete justice at the end of litigation, wherein Section 144 of the CPC serves as an illustration rather than a limitation of the Court's authority, as established in Gangadhar vs. Raghubar Dayal **1974 SCC OnLine All 148**, Kavita Trehan vs. Balsara Hygeine Products Limited **(1994) 5 SCC 380**, and South Eastern Coalfields Ltd. vs. State of Madhya Pradesh and Ors. **(2003) 8 SCC 648**.

83. He states that applying the threefold test of restitution outlined in DTC vs. M/s. International Avenues **2009 SCC OnLine Del 1794**, the present matter falls squarely within the third component requiring compensation or reparation for loss caused to another. FHL is obligated to compensate the Decree Holder because it actively conspired with the Judgment Debtors to dissipate the unencumbered shares in violation of six

assurances and court orders, thereby causing substantive loss to the Decree Holder and offending the majesty of this Court.

84. It is stated by the Learned Senior Counsel for the Decree Holder that Section 51(e) of the CPC vests this Court with an extraordinary residuary jurisdiction to enforce a decree in any manner deemed fit, ensuring that judicial orders are effectively executed rather than passed in vain, a power recognized and utilized in State of Haryana vs. State of Punjab **(2004) 12 SCC 673** and Narayan Dutt Tiwari vs. Rohit Shekher **(2012) 12 SCC 554**.

85. It is stated by the Learned Senior Counsel for the Decree Holder that this Court ought to exercise its residuary and inherent powers to direct FHL to restitute the present market value of the 5.29 crore dissipated shares, which is the only equitable mechanism to uphold the Court's majesty and satisfy a substantial portion of the decretal sum.

86. It is stated by the Learned Senior Counsel for the Decree Holder that, in the alternative, FHL ought to be impleaded as a Judgment Debtor pursuant to Section 145 of the CPC, which permits a third party who has furnished a guarantee or acted as a surety to be added to a decree.

87. He states that JD No. 1 and JD No. 6, functioning as directors, promoters, and controlling shareholders of FHL until February 2018, repeatedly tendered assurances to the Court based on their managerial control and underlying shareholding value in FHL, even citing potential market impacts on FHL's clients.

SUBMISSIONS OF MR. RAJIV NAYAR, LEARNED SENIOR ADVOCATE ON BEHALF OF FHL

88. A preliminary objection has been raised by Mr. Rajiv Nayar, learned Senior Counsel for FHL, stating that the Decree Holder has taken a *volte*

face. Inasmuch as in the entire execution proceedings and in the proceedings before the Apex Court, there has been no allegation against FHL, the entire case of the Decree Holder was that Judgment Debtor No. 1 and 6 had sold shares of FHL through FHHPL. Alternatively, the banks, in furtherance of the arrangements entered into between them and the Judgment Debtors had sold the unencumbered shares as a top-up. Meaning thereby, since the value of the shares pledged had gone below the value mentioned in the arrangements, the Judgment Debtors had to pledge in further shares to cover up the margins. These shares had been sold by the banks, for which FHL is not responsible. It is stated that this *volte face* cannot be permitted to be advanced in the absence of an affidavit by a competent person on behalf of the Decree Holder and this argument cannot be permitted to be raised only on the basis of certain notes.

89. It is submitted that in the absence of any allegation of any kind in the affidavits filed by the Decree Holder, allegations against FHL cannot be permitted to be levelled only by filing some application. It is further contended that neither FHL nor FHHPL was a Judgment Debtor. He states that the shares owned by FHHPL were never attached. He further states that they could not have been the part of any undertakings, as the Judgment Debtors could not have given any undertaking on behalf of the FHHPL which was a separate legal entity. He further asserts that undertakings were given by the Counsels for the Judgment Debtors without there being any specific inclusion of the shares of FHHPL in FHL. The assurances were only in relation to the personal assets of the Judgment Debtors and not of FHHPL which is not a Judgment Debtor.

90. He states that the issue of unencumbered or encumbered shares is

between the Decree Holder and the Judgment Debtors. He states that all the court assurances were personal undertakings by the Judgment Debtors regarding their own assets *inter alia* their shares in FHL. Neither FHL nor FHHPL gave any assurance or undertaking to this Court and was not bound by any restraint orders.

91. He states that on account of the fact that all parties understood that FHL had no role in the matter relating to dissipation of shareholding, FHL was not made a party to any legal proceedings at the time when the assurances were given or when the purported injunction orders were passed. The Decree Holder never impleaded FHL in the execution proceedings; on the contrary, FHL impleaded itself on April 5, 2018, and only in respect of specific applications, at the instance of the Decree Holder attempting to seek orders against FHL without making FHL a party to the proceedings.

92. The Learned Senior Counsel states that there was no operative injunction over FHHPL shares of FHL before the status quo order of the Apex Court of 11.08.2017. On 11.08.2017, the Apex Court first directed status quo over FHHPL's shares in FHL and this order was subsequently clarified and explained. On 31.08.2017, the Court clarified that the order covered both encumbered and unencumbered shares. A further clarification issued on 15.02.2018 which allowed banks to sell the shares encumbered prior to 11.08.2017. In fact, the prevailing view at the time, as admitted by the Decree Holder itself and the banks, was that no injunction existed on FHHPL's shares in FHL prior to 11.08.2017.

93. The Learned Senior Counsel states that the Decree Holder itself filed an SLP (C) No. 20417 of 2017 before the Apex Court seeking an injunction in relation to FHHPL shares in FHL having been aggrieved by the Order of

High Court not granting an injunction. It is only thereafter that the first injunction order of 11.08.2017 came to be passed. Since the Decree Holder was not granted orders for specific share attachment under CPC Order 21, Rule 46, therefore, the shares remained freely transferable till such date.

94. He states that by 11.08.2017, promoter holdings had already fallen materially. Public shareholding stood at about 64%. The majority of the unencumbered shares as pointed out by the Decree Holder had already been sold by then. He states that FHL had no involvement in those sales.

95. The Learned Senior Counsel states that FHL was not involved in any manner in the movement of these shares. It is the case of FHL that it is a listed company. Accordingly, the factum of FHL being majorly owned by JD No. 1 and 6 through FHHPL at that time was irrelevant given that under applicable law, a listed company has no role in share transfers as the shares of any listed company are freely transferable.

96. It is stated by the Learned Senior Counsel that the Apex Court in <u>Daiichi Sankyo Company Limited</u> (*supra*) restricted the enquiry in relation to the dissipation of FHHPL's shares only to the banks and financial institutions. FHL was, rightly so, nowhere sought to be covered in relation to the dissipation of FHL shares held by FHHPL.

97. Attention of this Court has been drawn to the affidavits filed by JD No. 14 and JD No. 19 to substantiate the contentions that there is no specific reference given to the shares of FHL held by FHHPL or that any undertakings given by FHHPL or FHL, which were not the parties to the case when the assurances were given and therefore the *volte face* at this stage blaming FHL for dissipation of shares, that too, *sans* an affidavit, is unacceptable.

98. He states that FHL is a listed company with numerous shareholders and is a separate legal entity distinct from its shareholders and its promoters. At all relevant times, FHL was an independent entity, distinct from FHHPL. Consequently, FHL's assets belongs to FHL itself, not to its shareholders like FHHPL. Similarly, FHL had no right or control over FHHPL's assets, that is, the shares held by FHHPL in FHL. He states that the well-settled legal principle of separate corporate existence cannot be ignored. Learned Senior Counsel contends that the Decree Holder has misled this Court by basing its arguments on a fundamentally wrong legal interpretation and as a public listed company, FHL could not have restrained the transfer of FHHPL's shares because dematerialized shares are freely transferable. The Learned Senior Counsel places reliance on the Judgment of the Apex Court in Reliance Natural Resources Limited v. Reliance Industries Limited, **(2010) 7 SCC 1,** wherein the Apex Court has observed as under:-

> *"58. Firstly, the MoU is not technically binding between RIL and RNRL. It is not in dispute that MoU is between three persons and the personality of the Company must be construed separate from these persons. The principle emphasised by Mr Jethmalani i.e. doctrine of identification may be applicable only in respect of small undertakings but in the case of RIL and RNRL, the companies have more than three million shareholders, in such a situation, one cannot make the companies' personality the same as that of the persons involved.*
>
> *[…]*
> *Doctrine of identification*
> *310. Shri Jethmalani went to some lengths in arguing that the doctrine of identification has immediate and crucial relevance in this case. As explained by him, there are certain individuals, who are the controlling mind of the Company and that once*

they have agreed to something, it should be deemed that the Company also agreed to the same, including the Board. Reliance was placed upon the decisions referred to in the summary of submissions.

[…]

311. We disagree. The doctrine of identification as developed by the courts is typically applicable in criminal and tortious liability cases. […]"

99. The Learned Senior Counsel furthers places reliance on the Apex Court judgment in Bacha F. Guzdar v CIT, **AIR 1955 SC 74**, where it was held that a shareholder's interest in a company is limited to their shareholding and does not extend to the assets of the company. The relevant portion is reproduced as follows:

"9. […] That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. The use of the word 'assets' in the passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company. A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them.

10. The interest of a shareholder vis-à-vis the company was explained in the case of Chiranjitlal Chowdhuri v. The Union of India and Others. That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. It is true that the *shareholders of the company have the, sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders.*

11. Reliance is placed on behalf of the appellant on a passage in Buckley's Companies Act, 12th Ed., page 894, where the etymological meaning of dividend is given as dividendum, the total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company. […] There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders."

100. The Learned Senior Counsel for FHL argues that FHL and FHHPL are separate legal entities, and so, FHL cannot be bound by assurances from JD No. 1 and 6, and cannot be treated as the same entity as the said JDs to scapegoat FHL by dragging it into this matter. Stating that FHL is the Judgment Debtors would threaten decades of settled jurisprudence protecting separate corporate personality, shareholders, and creditors.

Further, on 31.01.2018 and 27.02.2018, FHL had also made disclosures to the Stock Exchange to the effect that FHL was not involved in or impacted by the outcome of the proceedings initiated by the Decree Holder against JD No. 1 and 6. He further states that the proceedings did not have any direct impact on FHL or its operations. He adds that the Decree Holder was aware of these disclosures and took no steps to dispute them.

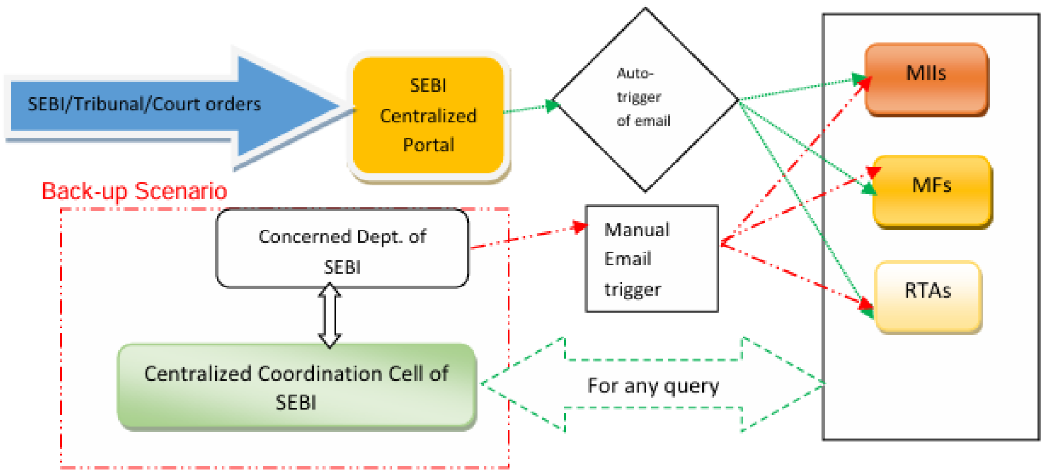
101. The Learned Senior Counsel for FHL states that FHL is a public company. Under Section 58(2) of the Companies Act, 2013, the securities of a public company are explicitly declared to be freely transferable, depriving FHL of any power to restrict the transfer of shares owned by FHHPL.

102. It is stated that under the Depositories Act, 1996 (specifically Sections 7(1), 9, 10(1), and 11), share transfers occur electronically via book-entry. The depository serves as the registered owner for effecting transfers, while the actual owner (FHHPL) acts as the beneficial owner. He states that the listed company merely receives post-facto intimation of completed transfers and inherently lacks the power to refuse registration.

103. It is stated that per the NSDL Business Rules (Rules 12.2 and 12.3), both market and off-market transfers are executed exclusively at the depository level. The Depository Participant ('**DP**') processes these transfers based solely on the authorization and instructions of the beneficial owner. Hence, as a listed company, FHL was neither required nor able to be involved in the transfer process executed between the beneficial owner, the DP, and the Depository.

104. The Learned Senior Counsel states that SEBI and the depositories govern the centralized mechanism for freezing demat accounts. According to the SEBI Master Circulars on Depositories dated December 15, 2016, and

updated on December 3, 2024, only the DP or the Depository has the statutory right to freeze or unfreeze accounts upon receiving instructions from a court, regulator, or statutory authority. It is stated that under this statutory framework, the listed issuer company plays absolutely no role. Consequently, FHL possessed no legal authority or operational mechanism to freeze FHHPL's demat account or halt the transfer of its shares.



105. The Learned Senior Counsel for FHL argues that the SEBI framework described above does not mention the listed company whose shares are in question. Furthermore, it imposes no obligation on the listed company to take any action in this regard. It is therefore clear that FHL had neither the power nor the legal ability to restrain FHHPL from trading in its demat securities. Aware of the judgment debtors' assurances, the Decree Holder should have obtained appropriate injunctive orders and communicated the same to the Depositories or the DP to freeze the relevant accounts using the mechanism available at that time. Instead of following the applicable legal framework, and ignoring its own failure to do so, the Decree Holder now

attempts to hold FHL liable.

106. The Learned Senior Counsel states that the disclosures cited by Decree Holder were made by FHHPL post-transfer, to comply with its obligations under the SAST Regulations, and FHL was only copied on them. He states that contrary to Decree Holder's baseless assertions, stock exchange bye-laws do not mandate that only a listed entity can file disclosures, and such disclosures were in fact filed by FHHPL, and not FHL.

107. It is the contention of the FHL that the law before April 2019 did not require promoter entities to obtain preclearance for trades as pleaded by the Decree Holder. He states that during the relevant period (2016–2018), Regulation 9 of the PIT Regulations required all listed entities to formulate a Code of Conduct. Paragraph 3 of Schedule B specified that this Code of Conduct applied to employees and connected persons designated by the company based on their role and function. Regulation 9 stated as follows:

> *"Code of Conduct.*
>
> *9. (1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner."*

108. Further, Paragraph 3 of Schedule B of the Insider Trading Regulations provides:

> *"3. Employees and connected persons designated on*

the basis of their functional role ("designated persons") in the organisation shall be governed by an internal code of conduct governing dealing in securities. The board of directors shall in consultation with the compliance officer specify the designated persons to be covered by such code on the basis of their role and function in the organisation. Due regard shall be had to the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation."

109. The submission of FHL is that the requirement to seek pre-clearance for trades was applicable only to such employees and connected persons as designated by the listed company based on their functional role. FHL's Code of Conduct, as applicable then, only required directors, senior management and specified employees to seek pre-clearance for trades, and not its promoter entities. The definition of 'designated employees' as applicable at the relevant point in time is reproduced below:

"(e) "Designated Employees" in relation to Company shall include –

i. Managing Director and Whole-time Director(s) (by whatever name called for the time being)

ii. Other Directors Chief Executive Officer,

iii. Chief Financial Officer and Company Secretary

iv. All direct reports of persons mentioned at (i), (ii) & (iii)

v. All Function / Department Heads
vi. . Such other persons as the Compliance Officer

may notify from time to time basis seniority and professional designation and role and criticality of function that may entail such person to have availability of UPSI."

110. The Learned Senior Counsel argues that at the relevant point, FHHPL was only a promoter entity, and thereby, was not required to obtain pre-clearance from the Compliance Officer for trades. It is submitted that that the law was amended only in April 2019 to specifically include 'promoter entities' within the scope of designated persons who mandatorily require pre-clearance of trades from compliance officer. He emphasises to note that the trades in question are from 2017- 2018 which is well before the law was amended. It is submitted that the amendment to the scope of 'designated persons' under the PIT Regulations was explained through the below mentioned excerpts from the 'Report of Committee on Fair Market Conduct' dated August 08, 2018, issued by SEBI:

"3.2. Applicability of code of conduct

As stated above, Regulation 9 of the PIT Regulations deals with the code of conduct for regulating and monitoring trades by employees and other connected persons. The regulations implies that the code of conduct is to be followed by all employees. However, the Code of Conduct itself which is contained in Schedule B (Clause 3) of the PIT Regulations states that only employees and connected persons designated on the basis of their functional role in the organisation shall be governed by the Code of Conduct. This can result in confusion as to the coverage of the Code of Conduct. Further, a listed company or market intermediary cannot enforce the code on persons other than employees and their relatives. Including all connected persons under coverage of the code may be *impractical, considering the wide definition of connected persons.*

Recommendation

The Committee recommends that the code of conduct may be made applicable to "designated person(s)" and immediate relatives of the "designated person(s)" only. The term "designated person(s)" should be defined by means of an explanation to regulation 9(2).

"Designated person(s)" for listed company should at least include Promoter, CEO and upto two levels below CEO of such listed company and its material subsidiaries irrespective of their functional role in the company or ability to have access to UPSI.[…]"

111. Attention of this Court is drawn to Regulation 9(4)(iii) of the amended Insider Trading Regulations states that as follows:

"Code of Conduct.

9. (1) The board of directors of every listed company and [the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director] shall formulate a code of conduct [with their approval] to regulate, monitor and report trading by its [designated persons and immediate relatives of designated persons] towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B [(in case of a listed company) and Schedule C (in case of an intermediary)] to these regulations, without diluting the provisions of these regulations in any manner.

[…]

[(4) For the purpose of sub regulation (1) and (2), the board of directors or such other analogous authority shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation and shall include:-
[…]
(iii) All promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries[…]"

112. He states that FHL's Code of Conduct was revised only after the PIT Regulations were amended. This revision brought promoter entities under the definition of 'designated persons' who required pre-clearance for trades from the Compliance Officer. The definition of 'designated persons' under the FHL Code of Conduct (revised in 2019) was as follows:

"(d) "Designated Persons" shall include –

i. Directors of the Company;

ii. Chief Executive Officer, Chief Financial Officer and Company Secretary of the Company;

iii. CEC Members (i.e. direct reports to CEO) of the Company and/or its subsidiaries;

iv. One level below CEC Members of the Company and/or its subsidiaries; and

v. Promoters of the Company;

vi. All employees of the Company and/or its subsidiaries based at Support Office of Corporate Secretarial, Finance, Investor Relations, Internal Audit, CEO Office and Legal functions; vii. Such other persons as the Compliance Officer may notify from time to time basis seniority and professional designation or basis role and criticality of function that may entail such person to have availability of UPSI."

113. He asserts that FHHPL was not a 'designated person' under the law and the FHL Code of Conduct during the relevant period (2017-2018). Therefore, the transaction of FHHPL did not require approval from FHL's Compliance Officer.

114. He states that the Decree Holder's reliance on the definition of 'connected person' is misplaced. Even if FHHPL was a connected person (since connected person includes a holding company or associate company or subsidiary company), Paragraph 6, Schedule B of the PIT Regulations only requires 'designated persons' to obtain pre-clearance for trades.

115. He states that the Decree Holder's reliance on FHHPL being an 'insider', and consequently being subject to a mandatory pre-clearance, is misplaced. He states that the Decree Holder incorrectly assumed that once an entity is classified as an 'insider' under the PIT Regulations, all obligations, including pre-clearance, apply conflating two distinct concepts. Under Regulation 2(1)(g) of the PIT Regulations, "insider" is a broad category that includes connected persons and those in possession of Unpublished Price Sensitive Information ("UPSI"). However, the requirement to seek pre-clearance applies only to designated persons, a narrower and specifically identified sub-set under the Regulations.

Therefore, even if FHHPL was an insider by virtue of being a connected person, this did not, by itself, impose a statutory pre-clearance obligation which was only applicable on the promoters at the relevant time.

116. He states that without prejudice that even if FHHPL had sought pre-clearance, the Compliance Officer's role under the law did not extend to assessing the legality of FHHPL's transactions.

117. He states under the PIT Regulations, pre-clearance is intended only to ensure designated persons do not trade while possessing UPSI. Consequently, the remit of the compliance officer under the PIT Regulations is to review whether a person possesses UPSI or not. UPSI means any information relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities. The assurances which were captured in court orders were in the public domain and do not amount to UPSI. This is clear from Schedule B of the Insider Trading Regulations which is reproduced as follows:

> *"6. When the trading window is open, trading by designated persons shall be subject to pre clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.*
>
> *[…]*
>
> *8. Prior to approving any trades, the compliance officer shall be entitled to seek declarations to the*

effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate."

118. The Learned Senior Counsel contends that it is a settled legal position that any alleged lapses by the Compliance Officer under the PIT Regulations are not automatically construed as lapses by the listed entity. He further states that any alleged violations of securities laws by FHL or its Compliance Officer are within the exclusive jurisdiction of SEBI, and any penalties in relation thereto can only be imposed by SEBI in accordance with the applicable securities law.

119. He states that the Compliance officer cannot be held liable in case the relevant designated employee does not seek a pre-clearance, and the Company cannot be held liable for lapses on the part of the compliance officer.

120. The Learned Senior Counsel states that the allegations made by the Decree Holder regarding violations of SAST Regulations is unsustainable. The disclosures were made post-facto, meaning FHL had no prior knowledge of the trades. In any event, FHL's knowledge is irrelevant since it could not have prevented the transfers which were executed through the depository.

121. Reliance is placed on Regulation 29 of the SAST Regulations which provides as follows:

"Disclosure of acquisition and disposal.
29.(1) Any acquirer, together with persons acting in concert with him acquiring shares or voting rights in a

target company, which taken together aggregates to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified:"

(2) Any person together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

Provided that in case of listed entity which has listed its specified securities on Innovators Growth Platform, any reference to "five per cent" shall be read as "ten per cent" and any reference to "two per cent" shall be read as "five per cent".

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition [or the disposal] of shares or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and
(b) the target company at its registered office.
[...]"

122. The Learned Senior Counsel for FHL states that it is in compliance

with these obligations set out above that FHHPL made the disclosures relied upon by the Decree Holder, on a post-facto basis.

123. He states that these disclosures were available in the public domain for the last 7-8 years. The Decree Holder, while being fully aware of such disclosures, took no action to pursue the freezing demat account of FHHPL through the relevant channels. It cannot now seek to shift the burden upon FHL, which has no role or control over trade of its demat securities. The Decree Holder was well aware that FHL had no role in such transfers, and accordingly, never approached FHL in respect of the trades and did not even implead FHL as a party in the proceedings.

124. He states that under the SAST Regulations, details of encumbrances are provided by the promoter itself. In terms of Regulation 31 of the Regulations, as existing during the relevant period of 2016-18, the promoters of a listed company were required to make disclosures regarding creation, invocation or release of any encumbrance over their shareholding in the listed company. These disclosures were to be made within 7 working days, by the promoters, to the company as well as the stock exchanges, simultaneously on a post-facto basis.

125. He states that in terms of Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('**LODR Regulations**'), a listed company is required to disclose its shareholding pattern on a quarterly basis, in the format prescribed by SEBI. The format inter alia includes details regarding any pledge or encumbrances created on the shareholding by the promoters. The information provided by the listed company under the quarterly shareholding pattern, in relation to details of encumbrances of promoters, is based solely on the disclosures made by the

promoters to the company under Regulation 31 of the SAST Regulations.

126. He states that since the requirement under the SAST Regulations for making disclosures regarding creation, invocation or release of any encumbrance is solely on the promoters at all times, and the company is only made aware of this encumbrance on a post-facto basis, it is unequivocally established that the information on encumbered versus unencumbered shares contained in the periodic shareholding pattern of the company is solely based on the disclosures received by the listed company from their promoters.

127. Relying on the BSE Listing Centre User Manual, the Learned Senior Counsel for FHL submits that the obligation to make disclosures regarding sale/pledge of shareholding under Regulations 29 and 31 of the SAST Regulations is solely on the promoter. The listed entity, just like the Decree Holder, and the world at large, only received such disclosures from FHHPL, being the promoter, on a post-facto basis.

128. Secondly, BSE through its circulars dated November 30, 2015 and March 11, 2016, has expressly clarified the following:

> *(a) The BSE Listing Centre User Manual which has been annexed by Daiichi to the Rejoinder – is meant only for disclosures or filings by listed entities. In relation to compliance filings by entities/individuals other than listed entities (such as FHHPL), a specific email id designated by BSE (i.e., corp.relations@bseindia.com) may be used. In this regard, BSE's circular dated November 30, 2015 states as follows:*
>
> > *"It may be noted that BSE has made available to all listed entities, an online web portal for filing their*

> *various submissions / disclosure documents with the Exchange, by the name of "Listing Centre"(http://listing.bseindia.com). 'Listing Centre' provides a single point resource for filing compliances and tracking your past filings. It provides an instant confirmation of the filing done by the company.*

Pursuant to the Regulation 10 (1) of the Listing Regulations, BSE has mandated the Listing Centre as the "Electronic Platform" for filing all filings and communication to be carried out by the Company. […]

Effective from December 1, 2015, those filings that are not filed with the Exchange through the Listing Centre are liable to be considered as non-submission and consequent non-compliance with the Regulations. Compliance filing for entities other than those listed on the Exchange may be done through Email to the designated ID i.e. corp.relations@bseindia.com."

[Emphasis in the original]

(b) The BSE Listing Centre may be used for the purposes of disclosures under the Takeover Code, solely in relation to submissions or disclosures required to be made by the listed entity in terms of the Takeover Code. BSE's circular dated March 11, 2016 states as follows:

> *"It may be noted that BSE has made available the 'Listing Centre', an online [sic] web portal to all listed entities for filing their various compliances / submissions with the Exchange. 'Listing Centre' provides a single point resource for filing compliances /submissions and tracking past filings as well. It also provides an instant confirmation of the filings done by the Listed Entities."*

129. He states that from the aforesaid circulars issued by BSE, it is clear that the listed entity (i.e., FHL) was neither authorized nor mandated to make disclosures in respect of trades made by of its erstwhile promoter (i.e., FHHPL). On the contrary, BSE itself has explicitly recognized that individuals/entities other than the listed entity are also mandated to make certain disclosures/filings under applicable SEBI laws, and in this context, BSE has provided a mechanism through which such disclosures/filings may be made by them (i.e., that filings by non-listed persons/entities, such as FHHPL, must be made via the designated BSE email ID). Accordingly, the allegations raised by the Decree Holder regarding FHL being responsible for the disclosures made by FHHPL are completely fallacious under applicable laws as well as from a factual perspective.

130. He also states that these disclosures by FHHPL to FHL are post facto intimation to the target company (FHL) after FHHPL has transacted with its shares and to that extent FHL has no control in the dissipation of FHHPL's shareholding in FHL.

SUBMISSIONS OF MR. HARISH SALVE, LEARNED SENIOR ADVOCATE ON BEHALF OF FHL

131. Mr. Harish Salve, learned Senior Counsel appearing for FHL, while adopting the submissions advanced by Mr. Rajiv Nayar, learned Senior Counsel, further submits that the present execution proceedings cannot be converted into a forum for fastening an independent liability upon a third party. It is contended that the jurisdiction of the Executing Court is confined to enforcement of the decree against the judgment debtors and their assets and does not extend to adjudicating fresh causes of action against entities who are strangers to the decree. According to the learned Senior Counsel,

allegations of conspiracy, collusion, aiding and abetting or negligence constitute independent causes of action which can only be adjudicated in appropriate substantive proceedings and cannot be determined in execution.

132. It is further submitted that the entire edifice of the Decree Holder's case proceeds on an erroneous assumption that the assets of a company are synonymous with the assets of its shareholders. Learned Senior Counsel argues that under the Companies Act, a company is a distinct juristic person and its directors owe fiduciary duties exclusively to the company and all its shareholders. Reliance was placed on Section 166 of the Companies Act, 2013 to contend that directors are statutorily obligated to act in the best interests of the company and cannot lawfully deploy corporate assets to satisfy the personal liabilities of promoters or shareholders. He therefore submits that FHL could neither have diverted nor preserved its assets for securing the decree passed against the Judgment Debtors.

133. Learned Senior Counsel further contends that the reliance placed by the Decree Holder on Order XXXIX Rule 2A of the CPC is wholly misconceived. He states that proceedings under Order XXXIX Rule 2A are confined to enforcement of injunctions granted during the pendency of suits and have no application to execution proceedings of the present nature. Similarly, he states that an alleged breach of an undertaking furnished before a Court is enforceable only through contempt jurisdiction and cannot be employed as a basis to impose substantive monetary liability upon a third party who neither furnished such undertaking nor was bound thereby.

134. Learned Senior Counsel further argues that the allegation of conspiracy is legally unsustainable. He states that the Decree Holder seeks to attribute the acts and intentions of the JD No. 1 and 6 to FHL on the

footing that they constituted the directing mind and will of the company while simultaneously alleging that the company conspired with the very same individuals. According to the learned Senior Counsel, these two propositions are mutually destructive in law and cannot coexist. It is contended that once the acts of the promoters are sought to be attributed to the company, the question of a conspiracy between the company and those very individuals does not arise.

135. Learned Senior Counsel also submits that no duty of care was owed by FHL to the Decree Holder so as to find a claim in negligence. Reliance was placed on the decisions in Customs and Excise Commissioners v. Barclays Bank Plc. **(2004) 122 Comp Cas 647** and JSC BTA Bank v. Khrapunov **[2018] UKSC 19**, to contend that freezing order jurisprudence does not impose a positive obligation upon third parties to police or prevent transactions involving the assets of judgment debtors unless such duty is expressly created by law or by a binding court order. It is therefore submitted that no liability can be fastened upon FHL for alleged failure to prevent transactions undertaken by its shareholders.

SUBMISSIONS OF MR. AMIT SIBAL, LEARNED SENIOR ADVOCATE ON BEHALF OF JUDGMENT DEBTOR NO. 1

136. Learned Senior Counsel for JD No. 1 commences the arguments by establishing the historical financial realities that pre-date any judicial intervention. It is submitted that the allegations of wilful asset dissipation raised by the Decree Holder are fundamentally diverse from the facts of the case.

137. Learned Senior Counsel for JD No.1 states that as early as 2016, long before the Apex Court passed any restrictive interim orders, a valid binding and irrevocable Agreement to Pledge (ATP) dated 30.03.2016 and 27.07.2016 was executed in favour of Yes Bank Limited. It is argued that this pre-existing contractual obligation created a crystallized, overriding legal encumbrance on the shares. The learned Senior Counsel emphasizes that any subsequent action taken by the Lender under this ATP were purely involuntary on the part of JD No.1 and cannot legally be construed as a wilful alienation of encumbered assets.

138. Learned Senior Counsel for JD No.1 states that the Promoter acted with absolute *bonafide* intent and immediate diligence at the time when the injunction orders were passed. Upon the passing of the said *status quo* order, JD No.1 did not act unilaterally but actively sought formal, professional, legal counsel from their corporate advisors to strictly comprehend the scope and ambit of the Court's order. Learned Senior Counsel submits that based on this legal advice, the order was reasonably understood to apply exclusively to altering the status of disclosed unencumbered assets held directly within the primary upstream holding companies, JD No. 14 and 19. It was never understood to impose a sweeping embargo on downstream subsidiaries like FHL.

139. Learned Senior Counsel contends that JD No.1's conduct was explicitly guided by this Court's subsequent Order dated 21.06.2017. It is argued that this specific order established a 'value preservation regime' which JD No.1 interpreted in good faith to mean that asset modifications, debt paring measures and restructuring operations were legally permissible, provided that the overall net asset value originally disclosed to the Court

was not diminished. Learned Senior Counsel states that all corporate manoeuvres executed during this window were measures targeted solely at preventing systematic corporate insolvency and saving the entities from liquidation without any intent of any contempt to evade the decree.

140. In regards to the share reductions, the learned Senior Counsel for JD No.1 strongly refutes the Decree Holder's characterisation of the events of July, 2017. It is submitted that the downward trend in shareholding was not a Promoter driven exercise but an involuntary liquidation done by third party financial institutions during a severe market crash. Learned Senior Counsel points out that on 20.07.2017, Yes Bank Limited unilaterally perfected its security interests under the ATP, absorbing 2,98,15,406 shares. It is stated that the single automated action constitutes approximately 91% of the total unencumbered reduction flagged by the Courts which occurred completely without the control of JD No.1.

141. Learned Senior Counsel states that during this exact period, Lakshmi Vilas Bank unilaterally invoked and liquidated 54,00,000 shares to recover outstanding credit facilities extended to Ranchem Private Limited completely independent of voluntary sale by JD No.1.

142. Learned Senior Counsel for JD No.1 states that the financial ruckus continued into August, 2017. He states that the Decree Holder has failed to discharge his burden of proving these shares were unencumbered. It is the case of JD No.1 that these were involuntary disposals executed by financial intermediaries to protect their own exposure amidst plunging stock values. It is submitted that financial intermediaries liquidated 1,35,09,330 shares directly on the market. Edelweiss disposed of 86,00,000 shares to clear

overdue ECL Finance obligations, while Birla Sun Life Asset Management sold 49,09,330 shares.

143. Learned Senior Counsel further notes that other institutional lenders such as Indiabulls Housing Finance and IL&FS Securities on behalf of HDFC liquidated 1.03 crore and 10,00,000 shares respectively in a similar fashion due to aggressive value plunging in the stock market. JD No.1 throughout this time was entirely powerless to intervene or halt these institutional sell offs. Learned Counsel for JD No.1 submits that on 08.02.2018, JD No. 1 and his Co-Promoter JD No. 6 formally resigned from the Board of Directors of FHL. It is argued that this total resignation was executed in good faith to insulate FHL from the Promoters' personal litigation.

144. Learned Senior Counsel stresses that from this date, JD No.1 ceased to hold any administrative, managerial or executive authority within FHL. Consequently, it is argued that JD No.1 cannot be held legally morally or equitably accountable for the corporate transaction that took place late in 2018, i.e., after their resignation. This includes the controlling stake acquisition by IHH Healthcare (Malaysia) and the transfer of assets to RHT Health Trust (Singapore). It is submitted that these deals were negotiated and finalized under a completely new and independent management. Learned Senior Counsel highlights that by the time these transactions were concluded, the combined Promoter holding *via* intermediate entities had dwindled down to 0.66%, rendering it impossible for JD No. 1 to possess the voting power or corporate control required to either facilitate or halt these transactions.

145. Learned Senior Counsel for JD No.1 then raises a fundamental constitutional objection based on the judicial record. He points out that this chronological narrative or share reductions, pledge top-ups or alleged breaches of interim orders have already been scrutinized by the Apex Court in its Judgment dated 15.11.2019 and 22.09.2022. It is submitted that the Apex Court has already inflicted the maximum statutory penalty permitted under the law sentencing JD No.1 of six months of civil imprisonment and a fine of Rs.5,000/-.

146. Learned Senior Counsel states that JD No.1 was continuously incarcerated for over 3.5 years spanning from 11.10.2019 to 08.06.2023 and has fully served the maximum contempt sentence imposed upon him. It is argued that parallel punitive execution and contempt proceedings before this Court on the exact same factual base constitutes a violation of the Fundamental Rights against double jeopardy guaranteed under Article 20(2) of the Constitution of India. He states that the State's coercive power cannot be utilized to repeatedly prosecute and punish an individual for an identical cause of action.

147. Learned Senior Counsel for JD No.1 finally submits that the ongoing execution application, i.e., EX.APPL.(OS) 3763/2022 and EX.APPL.(OS) 3764/2022, has lost its foundational basis. It is the case of JD No. 1 that during recent hearings, the Decree Holder has explicitly stated that it is not pressing its primary prayers specifically the appointment of forensic auditor. Learned Senior Counsel for JD No.1 argues that by abandoning the primary reliefs, the Decree Holder has destroyed the very substratum of this inquiry rendering it an academic exercise. He states that JD No.1's Directorship stand long vacated by operation of law and the primary holding companies

(JD No. 14 and 19) are entirely non-operational and facing insolvency. Due to his prolonged incarceration and the complete stripping of corporate infrastructure, JD No.1 has zero access to servers, physical files or transactional data bases.

148. He finally concludes by stating that JD No. 1 has no objection to the forensic audit. He prays that this Court may summon the primary transaction logs, pledge registers and ledger entries directly from the noticee banks and financial institutions. As the actual custodians of the evidence, only these institutions can provide the conclusive documentary proof required to validate JD No.1's defence which is that the asset liquidation was entirely lender driven, involuntary and triggered by a market crash rather than by contumacious design of JD No.1 as alleged by the Decree Holder.

SUBMISSIONS OF MR. BALBIR SINGH, LEARNED SENIOR ADVOCATE ON BEHALF OF JUDGMENT DEBTOR NO. 6

149. Learned Senior Counsel appearing for JD No. 6 submits, at the outset, that JD No. 6 had no role in the affairs or management of FHL. It is contended that, by the time the impugned transactions took place, JD No. 6 had ceased to function as a director and had devoted himself to religious pursuits.

150. The Learned Senior Counsel supports the primary defence advanced by JD No.1 regarding the historical lender driven nature of the share reduction. It is submitted that the massive depth in unencumbered shareholding was not an illicit, voluntary market sale by the Promoters but rather an involuntary, automated pledge of security by Yes Bank Limited under pre-existing contracts. Learned Senior Counsel for JD No. 6 aligns

with JD No.1 in asserting that FHHPL executed valid Agreement to Pledge with Yes Bank Limited long before any injunctions were passed, specifically on 30.03.2016 to secure 2,65,02,852 shares and on 27.07.2016 to secure a further 91,00,000 shares. Supporting JD No.1's case regarding July, 2017 liquidations, it is submitted that YBL unilaterally exercised its contractual rights to perfect the pledge on 20.07.2017 converting 2,98,15,406 'agreed to be pledged' shares into an actual crystallized pledge completely outside the volition of the JDs. Further aligning with JD No.1's stand that the Apex Court has already scrutinized these facts, the learned Senior Counsel for JD No. 6 points out that Paragraph 26 of the Apex Court's Order dated 22.09.2022 explicitly confirms and accepts the explanation provided by YBL regarding the mechanics and validity of these two ATPs.

151. The learned Senior Counsel for JD No. 6 further asserts specific mathematical submissions to address the exact scope of the present inquiry. It is stated that the current execution proceedings as strictly bound by the queries set up by the Apex Court in Paragraph 27 of its Judgment dated 15.11.2019 in Vinay Prakash Singh (*supra*). The Apex Court had noted a specific gap of 3,56,83,440 shares in the unencumbered bucket held by FHHPL between the quarters ending June, 2017 and September, 2017 and the present inquiry is strictly to determine the reason for this precise reduction.

152. It is the case of JD No. 6 that the two YBL pledge crystallization which is 58,31,000 shares pledged on 27.01.2016 and 2,98,15,406 shares pledged on 20.07.2017. Addressing the disclosures made to the Court, the learned Senior Counsel states that the assurances given on 06.03.2017 were explicitly made subject to objections to be taken at a later date during the

enforcement stage. It is argued that at the time of these disclosures, the 3.56 crore shares were legally and correctly reflected in the unencumbered bucket.

153. Relying on the Clauses of the ATP dated 31.03.2016, learned Senior Counsel submits that a mere 'agreement to pledge' does not create a perfected pledge or a present encumbrance. The lender's right over the shares emanates only upon the actual creation and perfection of the pledge, meaning there was no legal obligation on the Promoters to declare such shares as 'encumbered' prior to YBL perfecting them.

154. Learned Senior Counsel to prove its case relies on admissions by both the Decree Holder and YBL, asserting that the parties are *ad idem* regarding the dates of pledge creation. It is stated that the Decree Holder in its own application in EA 819/2010, Paragraph 43, explicitly tabulated the creation dates of these exact pledges as 27.12.2016 and 28.07.2017. Further, an affidavit filed by YBL dated 14.10.2020 confirms that the subject pledges were created upon the occurrence of pre-specified default events under agreements dating back to 2014. It is stated that at the time of execution of these initial pledge agreements, no Court had imposed any restraint on dealing with the shares.

155. Finally, the learned Senior Counsel for JD No. 6 relies on the productive ambit of the Apex Court's order dated 15.02.2018. This Order clearly stated that any shares encumbered prior to status quo order of 11.08.2017 could be lawfully sold by banks and financial institutions, and that the restraint would not apply retroactively to such transactions. It is submitted that because YBL pledged its shares on 20.07.2017 prior to the Order dated 11.08.2017 passed by the Apex Court, the resulting 3.56 crore

shares gap is legally insulated entirely lender driven and cannot constitute any violation of court orders by JD No.6.

156. The categorical stand of the Judgment Debtor No.1 and 6 is that the shares which had been released is that when the value of the shares came below the prescribed limit under the Agreement to Pledge entered into by FHHPL and the banks on the basis of the pre-executed agreements, the banks perfected their pledge on the unencumbered shares as encumbered and has sold the shares. It was also stated that certain shares which were released were sold on the basis of pre-existing power of attorneys executed by FHHPL to satisfy the loans.

<u>SUBMISSIONS OF MR. SANJEEV KAKRA, LEARNED SENIOR ADVOCATE ON BEHALF OF AXIS BANK LIMITED</u>

157. The contention of the Axis Bank is that it entered into facility agreements with certain companies controlled by JD No.1 and 6 between November, 2010 and May, 2017 and to secure these facilities, around 2.58 crore shares of FHL were pledged by FHHPL in favour of Axis Bank Limited between 28.03.2014 and 19.05.2017.

158. On the date when the status quo orders were passed by the Apex Court, i.e., on 11.08.2017 and 31.08.2017, FHHPL pledged 1,83,75,000 shares of FHL in favour of Axis Bank Limited and, therefore, each share remained encumbered until 15.02.2018, when the Apex Court *vide* Order dated 15.02.2018 modified the status quo order thereby restraining the sale of unencumbered shares only. Subsequent to the said order, the pledges on these encumbered shares were invoked and the same were sold by the Axis

Bank. Learned Senior Counsel for the Axis Bank categorically states that no unencumbered shares were converted to encumbered.

SUBMISSIONS OF MR. RITIN RAI, LEARNED SENIOR ADVOCATE ON BEHALF OF YES BANK LIMITED

159. Mr. Ritin Rai, learned Senior Counsel for Yes Bank, submits that the transaction dated 20.07.2017 was specifically regarding the encumbered shares only. It is further stated that the said transaction records that since there have been multiple defaults by the companies owned by JD No. 1 and 6, therefore, the Bank exercised its right to perfect the pledge under the Agreement to Pledge dated 30.03.2016. It is further submitted that the contention of JD No.1 and 6 that unencumbered shares became encumbered is fallacious and no unencumbered shares were converted into encumbered shares by the bank. It is further submitted that Yes Bank did not create any new pledge after the Order dated 11.08.2017 passed by the Apex Court and also no shares were sold after the Order dated 15.02.2018 passed by the Apex Court.

160. He states that *vide* Agreement to Pledge dated 30.03.2016, certain loan facilities were granted to three entities controlled by JD No.1 and 6 whereby credit facility of Rs. 100 crores were extended to Ligare Aviation Limited, credit facility of Rs.350 crores (approx.) were extended to Ligare Voyages Limited and further a credit facility of Rs. 200 crores were extended to Healthfore Technologies Limited. To secure the said facilities, FHHPL pledged specified shares of FHL in favor of Yes Bank Limited.

161. It is further contended that since specified shares were pledged, there was no question of having any top up arrangement. He therefore states that

the contentions raised by JD No. 1 and 6 are completely fallacious as these pledged shares were already in the bracket of encumbered shares and no fresh encumbrances were created by virtue of any top-up.

162. It is contended that YBL maintained a commercial lending relationship with companies owned and controlled by Malvinder Mohan Singh (MMS) and Shivinder Mohan Singh (SMS) since 2009. Between August 2013 and May 2017, YBL extended loans and lines of credit totaling approximately Rs. 1,830 Crore through several facility agreements. To secure these facilities. several pledge agreements, including agreements to pledge (ATPs), in relation to FHHPL shares held by Fortis Healthcare Holdings Private Limited (FHHPL) were executed in favor of YBL from 2014 onwards.

163. He states that of the total 8,97,81,906 FHL shares encumbered in favor of YBL, 5,41,35,500 shares were encumbered prior to March 2016 and are not in dispute. The remaining 3,56,46,406 shares were encumbered *vide* ATPs dated 30 March 2016 and 27 July 2016. Despite invoking the pledges, YBL was required to institute recovery proceedings to recover their dues demonstrating that the security taken was insufficient to discharge the outstanding liabilities.

164. He further states that the ATPs dated 30 March 2016 and 27 July 2016 themselves created an encumbrance over the FHL shares in favour of YBL from the dates of their execution, not merely from the dates when pledges were formally recorded with NSDL. The ATPs contained non-disposal undertakings imposing restrictions upon free and marketable title to the shares.

165. The Counsel for YBL supports his case by demonstrating that the term 'encumbrance' has been defined under Chapter V, Regulation 28(3) of the SAST Regulations. The relevant extract is reproduced as follows:

> *"(a) any restriction on the free and marketable title to shares, by whatever name called, whether executed directly or indirectly;*
> *(b) pledge, lien, negative lien, non-disposal undertaking; or*
> *(c) any covenant, transaction, condition or arrangement in the nature of encumbrance, by whatever name called, whether executed directly or indirectly."*

166. Notably, even prior to the Second Amendment, Non-Disposal Undertakings constituted "encumbrances" requiring disclosure under the SAST regulations. This is evident from SEBI Circular CIR/CFD/POLICYCELL/3/2015 dated 05 August 2015 which prescribes the disclosure format under Regulation 31 and expressly identified "non-disposal undertaking" as a category of encumbrance. Similarly, SEBI Circular bearing CIR/MRD/DP/5612017 dated 14 June 2017 reiterated that the SAST Regulations require promoters to disclose details of their encumbered shares, including shares subject to non-disposal undertakings, which fall within the scope of "encumbrances" for the purposes of such disclosure obligations.

167. YBL's case is that the ATPs created an "encumbrance", a term designedly broader than a pledge over the FHL shares from the dates of execution. YBL places reliance upon Articles 5(c), 5(d), 5(c), 5(f), 5(n), 5(s), 5(ee), 5(gg), 5(ii), and 5(jj) of the ATPs. Accordingly, the Judgment

Debtors were obligated to disclose the encumbrances created over FHL shares to this Court at the outset.

168. Post September 2016, the Judgment Debtors were required to disclose their encumbered assets to this Court. Their failure to disclose that they were barred from dealing with the FHL shares under the ATPs cannot make YBL liable for any unilateral undertaking given by them in breach of the ATPs.

169. YBL did not create any fresh encumbrance or pledge over FHL shares after 11 August 2017, the date of the first status quo order passed by the Apex Court. The encumbrance over 8,97,81,906 FHL shares existed prior to the said order. YBL invoked and sold the pledged shares only pursuant to the order dated 15 February 2018 passed by the Apex Court, which permitted banks to enforce pledges created prior to 11 August 2017.

170. The Apex Court in its judgment dated 22 September 2022 did not direct a mandatory forensic audit into the banks. YBL has placed all material facts on record before the Apex Court including loans extended, creation of pledges, defaults, invocation and sale of shares and has complied with all directions issued. Apart from FHL shares, YBL enforced its rights over all other secured assets, including fixed deposits, immovable properties, shares of other companies, and monetization of aircraft. No security was left unenforced once the loans were recalled, demonstrating that YBL acted as a bonafide secured creditor.

171. Attention of this Court has also been drawn to the Frequently Asked Question (FAQs) on SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The relevant FAQ, which was deleted on 03.09.2019, prior to its omission read as under:-

> *"**Whether furnishing of a Non Disposal Undertaking (NDU) by promoters to the lenders would be covered under disclosures of "Encumbered shares" by promoters of the Target Company?***
>
> *Yes, all types of NDUs by promoters will be covered under the scope of disclosures of "Encumbrances" under the Regulations. These NDUs may, inter-alia, include undertaking for:*
>
> *(i) Not encumbering shares to another party without the prior approval of the party with whom the shares have been encumbered;*
> *(ii) Non-disposal of shares beyond a certain threshold so as to retain control;*
> *(iii) Non-disposal of shares entailing risk of appropriation or invocation by the party with whom the shares have been encumbered or for its benefit."*

172. It is stated that this question has been deleted pursuant to the amendment in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

173. It is submitted that there is no basis for forensic investigation/audit against Yes Bank Limited as the Decree Holder itself has acknowledged that the Bank did not create any encumbrances subsequent to the Order dated 11.08.2017 passed by the Apex Court and has also narrowed down its request qua forensic audit to only three banks excluding Yes Bank Limited. It is further stated that there is no material evidence to show that forensic audit is required against Yes Bank Limited who is also not a Judgment Debtor in the present proceedings.

174. It is further stated that the Decree Holder in its hearing note dated 13.04.2026 has stated that the documents produced by 12 Banks and financial institutions show that no loan, pledge or encumbrance in any form whatsoever including top-ups was created after the Order dated 11.08.2017.

<u>SUBMISSIONS OF MR. SANJEEV KAKRA, LEARNED SENIOR ADVOCATE ON BEHALF OF LAKSHMI VILAS BANK</u>

175. Similar contentions have been raised by Lakshmi Vilas Bank wherein it has categorically stated that there was no conversion of unencumbered shares to encumbered shares on the basis of top up.

<u>SUBMISSIONS OF MR. JAYANT MEHTA, LEARNED SENIOR ADVOCATE ON BEHALF OF INDIA BULLS HOUSING FINANCE LIMITED</u>

176. Similar averments have been made by Indiabulls Housing Finance Limited. It is stated that only the shares which had been specifically pledged or were encumbered shares, have alone been sold.

177. Attention of this Court has been drawn to various clauses of the loan agreement to contend that shares/securities which were pledged were kept in separate Demat Account No.12393088 maintained at depository participant M/s Indiabulls Ventures Limited (now known as Indiabulls Limited) were encumbered shares.

178. It is stated that 2,27,10,980 shares of FHL were pledged *vide* pledge agreements dated 03.12.2016 and 28.04.2017. It is stated that 30,59,260 shares were encumbered by pledge which was created on 14.08.2017 over shares held in lien and 21,29,760 shares were sold by using the Power of Attorney. It is stated that no other shares other than the shares which were specifically held in the demat account have been sold and requisite

information has been made in the depositories. It is stated that the Apex Court *vide* Order dated 15.11.2019 held Indiabulls Housing Finance Limited for contempt and directed to deposit an amount of Rs.17.93 crore which were deposited by Indiabulls Limited, therefore, nothing else survives against the bank.

<u>SUBMISSIONS OF MR. ASHIM VACHHER, LEARNED SENIOR ADVOCATE ON BEHALF OF ECL FINANCE LIMITED</u>

179. Learned Senior Counsel for the ECL Finance Limited submits that the Agreement for Pledge shows an intention to create pledge which provides a contractual right in favour of the pledgee and an obligation to create a pledge on behalf of the Pledgor. Under such agreement, the pledgor undertakes to create a pledge over the specific shares identified therein, while the pledgee acquires the corresponding right to have such pledge created as security for the relevant loan facility or transaction. The agreement also governs the rights and obligations of the parties, including the events of default, notice requirements for invocation, mode of sale, release of pledged shares, margin/top-up obligations and other enforcement-related terms.

180. He states that in case of dematerialized shares, the agreement by itself does not complete the creation of a pledge. The pledge is created and recognized in law only when the procedure prescribed under the Depositories Act, 1996, the applicable SEBI Regulations and the bye-laws/business rules of NSDL/CDSL is followed, including marking/recording of the pledge in the depository system.

181. He states that the process of creation of 'pledge' which amounts to an 'encumbrance' over such demat shares, has to be done as per the depository mechanism.

182. The Learned Counsel explains that under Section 12 of the Depositories Act, 1996, read with the applicable SEBI Regulations and the bye-laws/rules of NSDL and CDSL, a pledge is created and marked in the depository records of the pledgor through its Depository Participant (DP), pursuant to the agreement for pledge, such entry constitutes evidence of creation of pledge over the concerned shares. Such pledge creates a legal 'encumbrance' over the pledged shares, inasmuch as the pledgor cannot freely deal with, transfer or dispose of the pledged/marked shares unless the pledge is released by the pledgee. Accordingly, all such marked and pledged shares fall within the category of "encumbered shares".

183. He further states that Regulation 58 of the SEBI (Depositories and Participants) Regulations 1996, lays down the manner of creating a pledge. This regulation stands replaced by Regulation 79 of SEBI (Depositories and Participants) Regulations 2018.

184. He states that Regulation 31 of the SEBI (Substantial Acquisition of shares and Debentures) Regulations, 2011, had made it mandatory for the promoters and their PACs to make all disclosures to the stock exchange, relating to any 'encumbrances' created by them on their securities (prior to amendment, w.e.f. 01.04.2022).

185. He states that Regulation 28(3) of the above SAST Regulations, gives a wide and inclusive definition of 'encumbrance as, "it shall include pledge, lien, or any such transaction, by whatever name called."

186. It is submitted that the creation and maintenance of the pledge over the shares of FHL was governed by the respective Pledge Agreements, which obligated the pledgor to create and maintain the pledge in favour of ECL as security for the loan facilities. The agreements further required the pledgor to maintain the stipulated security cover of 1.75x, 1.70x or 2x, as applicable, in terms of Clause 2.8 read with Schedule I. Consequently, where the security cover fell below the prescribed threshold, the pledgor was contractually obliged to provide additional shares by way of top-up security, while pledged shares were released upon restoration of the requisite margin or repayment of the underlying facilities.

187. It is further submitted that the pledge over the dematerialised shares was created in accordance with the prescribed statutory and depository framework, thereby resulting in a valid and legally enforceable encumbrance in favour of ECL. It is contended that all such pledges were created prior to the Apex Court's status quo order dated 11.08.2017, and that the subsequent invocation and sale of the pledged shares were undertaken only after the clarification issued by the Apex Court vide order dated 15.02.2018.

188. It is specifically stated that ECL has not sold or released any share directly or indirectly as stated by the Judgment Debtor and more particularly JD No.1.

189. After drawing the attention of this Court to Section 12 of the Depositories Act, 1996, Regulation 79 of SEBI (Depositories and Participants) Regulations 2018 and other provisions, it is contended that the term ‘encumbrance’ in law is much wider and inclusive in nature and denotes any legal burden, restriction, claim, lien, pledge, security interest or

limitation created over property, which restricts the owner's free and marketable title or unfettered right to deal with such property.

190. It is contended that even as per the Decree Holder the banks including ECL have sold shares forming part of the encumbered share category and no unencumbered shares have been sold, pledged or invoked by the ECL subsequent to the status quo Order dated 11.08.2017 passed by the Apex Court. Reliance has been placed on the Judgment passed by the Apex Court in PTC India Financial Services Limited v. Venkateswarlu Kari & Anr., **2022 SCC OnLine SC 608** and the Judgment passed by a Coordinate Bench of High Court of Bombay in Jry Investments Private Limited v. Deccan Leafine Services Limited &Ors., **2003 SCC OnLineBom 1134**.

SUBMISSIONS OF MR. JAYANT MEHTA, LEARNED SENIOR ADVOCATE ON BEHALF OF CREDIT SUISSE FINANCE (INDIA) PRIVATE LIMITED

191. Learned Senior Counsel Jayant Mehta for the Credit Suisse Finance (India) Private Limited states that the credit facilities extended to RHC Holding Private Limited (JD No. 19) and ANR Securities Private Limited (JD No. 18), were closed on 15.03.2017 and 22.03.2017 respectively. He states that the facilities stood closed in March, 2017 which is well before the status quo Orders dated 11.08.2017 and 31.08.2017 passed by the Apex Court. Hence, there was no contravention of status quo order by the bank.

192. Heard the learned Counsels for all the Parties.

ANALYSIS AND CONCLUSION

193. As noted earlier, the Award was passed on 29.04.2016 and has been upheld till the Apex Court. There has been no stay in the execution of the

Award and the proceedings for execution commenced in the year 2016 itself. Since then, almost a decade has elapsed and the execution proceedings are still pending.

194. At the time when the Award was passed, the Judgment Debtors had substantial assets to satisfy the decretal amount. The principal sum awarded under the Award was roughly about Rs. 2,500 Crores. As of now, according to the Judgment Debtors, there are hardly any assets left to fulfil the decree, meaning thereby, the amount available for satisfying the decree has been dissipated consistently, leading to the present application, which is one for conduct of a forensic audit to unearth as to how the assets of the Judgment Debtors have consistently being eroded despite repeated undertakings and Stay Orders. The forensic audit would help in unearthing as to how, and who all have aided and abetted, the constant erosion of the assets of the Judgment Debtors, and in what manner the assets have been eroded, and how the orders of the Court have been flouted. In these peculiar situations, the Courts cannot be mere silent spectator and throw out their hands in vain and say nothing can be done. This would actually be the death knell for any judicial system in maintaining the rule of law. The conduct of the forensic audit is not an exercise in futility. The forensic audit will pin point the exact manner by which this Court was deceived, the *dramatis personae* who aided and abetted in evasion of Court Orders by misleading the Court, so that the Court can take steps by fixing liability on the perpetrators of dissipation of shares to ensure that the majesty of law is upheld.

195. As noted by the Apex Court in its judgment dated 15.11.2019 in Vinay Prakash Singh (*supra*), in September 2016, the total shares held by the Judgment Debtors in FHL were 32,50,91,529 comprising of

27,21,59,955 encumbered shares and 5,29,31,574 unencumbered shares. The first of the assurances was given to this Court in May, 2016, that the Decree Holder's interest would be protected to the extent of the total sum awarded under the Arbitral Award and that there will be no *fait accompli*. Despite consistent assurances which were given to this Court thereafter, the unencumbered shares which were sufficient to protect the rights of the Decree Holder have come down from 5,29,31,574 in September, 2016 to 6,01,607 in December, 2018. Around 5.23 Crore unencumbered shares of the Judgment Debtors have been sold contrary to the assurances given to this Court.

196. The Judgment Debtors No. 1 and 6 control all the Judgment Debtors. Judgment Debtors No. 1 and 6, through other Judgment Debtors, have held 100% interest in FHHPL, the company which held over 70% shares of FHL. FHL was thus fully in the control of Judgment Debtors No. 1 and 6, either through themselves or through their other Judgment Debtor entities at the time of the first assurance. About six assurances have been given to this Court by various Judgment Debtors. It is to be noted that Judgment Debtor No. 1 and Judgment Debtor No. 6 were also the Managing Directors and Directors of the FHL.

197. One of the primary contentions on behalf of FHL was that there was no stay or injunction of any kind over the shares held by FHHPL, and shares of FHL were freely transferable as provided under Section 58(2) of the Companies Act, 2013. This argument need not detain the court at all. Section 58(2) of the Companies Act, 2013, is reproduced below:

> *"**58.(2)** Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable:*
>
> *Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract."*

198. A bare perusal of the provision, and the proviso itself shows that if a Contract is made for the transfer of certain securities, the freely tradeable nature of the shares would go away. Certainly, an assurance or undertaking to a Constitutional Court of this Country must be kept on a higher pedestal than a contract between the parties, and would alter the status of the shares to be ones which ought not to be transferred.

199. In this scenario, this Court reminds itself of the observations made by the Apex Court in State of U.P. v. Renusagar Power Co., **(1988) 4 SCC 59**, where the Apex Court has observed "*It is high time to reiterate that in the expanding horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation. The aim of the legislation is to do justice to all the parties. The horizon of the doctrine of lifting of corporate veil is expanding*".

200. The Apex Court in ArcelorMittal India Private Limited v. Satish Kumar Gupta, **(2019) 2 SCC 1** explicitly held that where statutory frameworks are designed to regulate or restrict the actions of persons in management, the corporate facade must be disregarded to unearth the 'real individuals' orchestrating the entity's affairs. The veil of incorporation cannot be permitted to serve as a convenient shield for shadow controllers or

promoters seeking to evade statutory prohibitions through complex webs of holding structures. Rather, courts are duty-bound to look beyond the surface of the corporate entity to ascertain the actual persons in the 'driving seat' who exercise proactive, *de facto* control over the enterprise. The relevant portion is reproduced hereunder:

> "*33. The doctrine of piercing the corporate veil is as well settled as the Salomon [Salomon v. A. Salomon & Co. Ltd., 1897 AC 22 (HL)] principle itself. In LIC v. Escorts Ltd. [LIC v. Escorts Ltd., (1986) 1 SCC 264] , this Court held : (SCC pp. 334-36, para 90)*
>
> > *"90. It was submitted that the thirteen Caparo companies were thirteen companies in name only; they were but one and that one was an individual, Mr Swraj Paul. One had only to pierce the corporate veil to discover Mr Swraj Paul lurking behind. It was submitted that thirteen applications were made on behalf of thirteen companies in order to circumvent the scheme which prescribed a ceiling of one per cent on behalf of each non-resident of Indian nationality or origin, or each company 60 per cent of whose shares were owned by non-residents of Indian nationality/origin. Our attention was drawn to the picturesque pronouncement of Lord Denning, M.R. in Wallersteiner v. Moir [Wallersteiner v. Moir, (1974) 1 WLR 991 : (1974) 3 All ER 217 (CA)] and the decisions of this Court in Telco Ltd. v. State of Bihar [Telco Ltd. v. State of Bihar, (1964) 6 SCR 885 : AIR 1965 SC 40] , CIT v. Sri Meenakshi Mills Ltd. [CIT v. Sri Meenakshi Mills Ltd., (1967) 1 SCR 934 : AIR 1967 SC 819] and Workmen v. Associated Rubber Industry Ltd. [Workmen v. Associated Rubber Industry Ltd., (1985) 4 SCC 114 : 1985 SCC (L&S) 957] While it is firmly established ever since Salomon v. A.*

Salomon & Co. Ltd. [Salomon v. A. Salomon & Co. Ltd., 1897 AC 22 (HL)] was decided that a company has an independent and legal personality distinct from the individuals who are its members, it has since been held that the corporate veil may be lifted, the corporate personality may be ignored and the individual members recognised for who they are in certain exceptional circumstances. Pennington in his Company Law (4th Edn.) states:

> *'Four inroads have been made by the law on the principle of the separate legal personality of companies. By far the most extensive of these has been made by legislation imposing taxation. The government, naturally enough, does not willingly suffer schemes for the avoidance of taxation which depend for their success on the employment of the principle of separate legal personality, and in fact legislation has gone so far that in certain circumstances taxation can be heavier if companies are employed by the taxpayer in an attempt to minimise his tax liability than if he uses other means to give effect to his wishes. Taxation of companies is a complex subject, and is outside the scope of this book. The reader who wishes to pursue the subject is referred to the many standard textbooks on corporation tax, income tax, capital gains tax and capital transfer tax.*
>
> *The other inroads on the principle of separate corporate personality have been made by two sections of the Companies Act, 1948, by judicial disregard of the principle where the protection of public interest is of*

paramount importance, or where the company has been formed to evade obligations imposed by the law, and by the courts implying in certain cases that a company is an agent or trustee for its members.'

In Palmer's Company Law (23rd Edn.), the present position in England is stated and the occasions when the corporate veil may be lifted have been enumerated and classified into fourteen categories. Similarly in Gower's Company Law (4th Edn.), a chapter is devoted to "lifting the veil" and the various occasions when that may be done are discussed. In Telco Ltd. [Telco Ltd. v. State of Bihar, (1964) 6 SCR 885 : AIR 1965 SC 40] the company wanted the corporate veil to be lifted so as to sustain the maintainability of the petition, filed by the company under Article 32 of the Constitution, by treating it as one filed by the shareholders of the company. The request of the company was turned down on the ground that it was not possible to treat the company as a citizen for the purposes of Article 19. In CIT v. Sri Meenakshi Mills Ltd. [CIT v. Sri Meenakshi Mills Ltd., (1967) 1 SCR 934 : AIR 1967 SC 819] the corporate veil was lifted and evasion of income tax prevented by paying regard to the economic realities behind the legal facade. In Workmen v. Associated Rubber Industry Ltd. [Workmen v. Associated Rubber Industry Ltd., (1985) 4 SCC 114 : 1985 SCC (L&S) 957] resort was had to the principle of lifting the veil to prevent devices to avoid welfare legislation. It was emphasised that regard must be had to substance and not the form of a transaction. Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil,

or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected, etc."
(emphasis supplied)

***34**. This statement of the law was followed in Union of India v. ABN Amro Bank [Union of India v. ABN Amro Bank, (2013) 16 SCC 490] , at paras 43 and 44 as follows : (SCC pp. 519-20)*

"43. We are of the view that in a given situation the authorities functioning under FERA find that there are attempts to overreach the provision of Section 29(1)(a), the authority can always lift the veil and examine whether the parties have entered into any fraudulent, sham, circuitous device so as to overcome statutory provisions like Section 29(1)(a). It is trite law that any approval/permission obtained by non-disclosure of all necessary information or making a false representation tantamount to approval/permission obtained by practising fraud and hence a nullity. Reference may be made to the judgment of this Court in Union of India v. Ramesh Gandhi [Union of India v. Ramesh Gandhi, (2012) 1 SCC 476 : (2012) 1 SCC (Civ) 295 : (2012) 1 SCC (Cri) 467 : (2012) 2 SCC (L&S) 508] .

44. Even in Escorts case [LIC v. Escorts Ltd., (1986) 1 SCC 264] , this Court has taken the view that it is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected, etc. In Escorts case [LIC v. Escorts Ltd., (1986) 1 SCC 264] , this Court held as follows : (SCC pp. 335-36, para 90)

> *'90. … Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern.'"*

***35**. Similarly in Balwant Rai Saluja v. Air India Ltd. [Balwant Rai Saluja v. Air India Ltd., (2014) 9 SCC 407 : (2014) 2 SCC (L&S) 804] , this Court in following Escorts Ltd. [LIC v. Escorts Ltd., (1986) 1 SCC 264] , held : (Balwant Rai case [Balwant Rai Saluja v. Air India Ltd., (2014) 9 SCC 407 : (2014) 2 SCC (L&S) 804] , SCC pp. 439-41, paras 70-73)*

> *"70. The doctrine of "piercing the corporate veil" stands as an exception to the principle that a company is a legal entity separate and distinct from its shareholders with its own legal rights and obligations. It seeks to disregard the separate personality of the company and attribute the acts of the company to those who are allegedly in*

direct control of its operation. The starting point of this doctrine was discussed in the celebrated case of Salomon v. A. Salomon & Co. Ltd. [Salomon v. A. Salomon & Co. Ltd., 1897 AC 22 (HL)] Lord Halsbury, LC, negating the applicability of this doctrine to the facts of the case, stated that : (AC pp. 30 & 31)

> *'[a company] must be treated like any other independent person with its rights and liabilities [legally] appropriate to itself … whatever may have been the ideas or schemes of those who brought it into existence.'*

Most of the cases subsequent to Salomon case [Salomon v. A. Salomon & Co. Ltd., 1897 AC 22 (HL)] , attributed the doctrine of piercing the veil to the fact that the company was a "sham" or a "façade". However, there was yet to be any clarity on applicability of the said doctrine.

71. In recent times, the law has been crystallised around the six principles formulated by Munby, J. in Ben Hashem v. Ali Shayif [Ben Hashem v. Ali Shayif, 2008 EWHC 2380 (Fam) : (2009) 1 FLR 115] . The six principles, as found at paras 159-64 of the case are as follows:

(i) Ownership and control of a company were not enough to justify piercing the corporate veil;

(ii) The court cannot pierce the corporate veil, even in the absence of third-party interests in the company, merely because it is thought to be necessary in the interests of justice;

(iii) The corporate veil can be pierced only if there is some impropriety;

(iv) The impropriety in question must be linked to the use of the company structure to avoid or conceal liability;

(v) To justify piercing the corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is use or misuse of the company by them as a device or facade to conceal their wrongdoing; and

(vi) The company may be a "façade" even though it was not originally incorporated with any deceptive intent, provided that it is being used for the purpose of deception at the time of the relevant transactions. The court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong which those controlling the company had done.

72. The principles laid down by Ben Hashem case [Ben Hashem v. Ali Shayif, 2008 EWHC 2380 (Fam) : (2009) 1 FLR 115] have been reiterated by the UK Supreme Court by Lord Neuberger in Prest v. Petrodel Resources Ltd. [Prest v. Petrodel Resources Ltd., (2013) 2 AC 415 : (2013) 3 WLR 1 : 2013 UKSC 34, para 64] Lord Sumption, in Prest case [Prest v. Petrodel Resources Ltd., (2013) 2 AC 415 : (2013) 3 WLR 1 : 2013 UKSC 34, para 64] , finally observed as follows : (AC p. 488, para 35)

> ***'35. I conclude that there is a limited principle of English law which applies when a person is under an existing legal***

obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil.'

73. The position of law regarding this principle in India has been enumerated in various decisions. A Constitution Bench of this Court in LIC v. Escorts Ltd. [LIC v. Escorts Ltd., (1986) 1 SCC 264] , while discussing the doctrine of corporate veil, held that : (SCC pp. 335-36, para 90)

> *'90. ... Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the*

object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected, etc.'"

36. *Similarly in DDA v. Skipper Construction Company (P) Ltd. [DDA v. Skipper Construction Company (P) Ltd., (1996) 4 SCC 622] , this Court held : (SCC pp. 637-39, paras 24-28)*

"24. In Salomon v. A. Salomon & Co. Ltd. [Salomon v. A. Salomon & Co. Ltd., 1897 AC 22 (HL)] the House of Lords had observed : (AC p. 51)

'[the] company is at law a different person altogether from the subscribers ...; and, though it may be that after incorporation the business is precisely the same as it was before, the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by that Act.'

Since then, however, the courts have come to recognise several exceptions to the said rule. While it is not necessary to refer to all of them, the one relevant to us is "when the corporate personality is being blatantly used as a cloak for fraud or improper conduct". [Gower : Modern Company Law — 4th Edn. (1979) at p. 137.] Pennington (Company Law — 5th Edn. 1985 at p. 53) also states that 'where the protection of public interests is of paramount importance or where the *company has been formed to evade obligations imposed by the law', the court will disregard the corporate veil. A Professor of Law, S. Ottolenghi in his article "From peeping behind the Corporate Veil, to ignoring it completely" [(1990) 53 Modern Law Review 338] says*

*'**the concept of "piercing the veil" in the United States is much more developed than in the UK. The motto, which was laid down United States v. Milwaukee Refrigerator Transit Company [United States v. Milwaukee Refrigerator Transit Company, (1905) 142 Fed 247] by Sanborn, J. and cited since then as the law, is that "when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons". The same can be seen in various European jurisdictions.**'*

Indeed, as far back as 1912, another American Professor L. Maurice Wormser examined the American decisions on the subject in a brilliantly written article "Piercing the veil of corporate entity" [(1912) 12 Columbia Law Review 496] and summarised their central holding in the following words:

'The various classes of cases where the concept of corporate entity should be ignored and the veil drawn aside have now been briefly reviewed. What general rule, if any, can be laid down? The nearest approximation to generalisation which the present state of the authorities would

warrant is this : When the conception of corporate entity is employed to defraud creditors, to evade an existing obligation, to circumvent a statute, to achieve or perpetuate monopoly, or to protect knavery or crime, the courts will draw aside the web of entity, will regard the corporate company as an association of live, up-and-doing, men and women shareholders, and will do justice between real persons.'

25. In Palmer's Company Law, this topic is discussed in Part II of Vol. I. Several situations where the court will disregard the corporate veil are set out. It would be sufficient for our purposes to quote the eighth exception. It runs:

> *'The courts have further shown themselves willing to "lifting the veil" where the device of incorporation is used for some illegal or improper purpose…. Where a vendor of land sought to avoid the action for specific performance by transferring the land in breach of contract to a company he had formed for the purpose, the court treated the company as a mere "sham" and made an order for specific performance against both the vendor and the company.'*

Similar views have been expressed by all the commentators on the Company Law which we do not think necessary to refer to.

26. The law as stated by Palmer and Gower has been approved by this Court in Telco Ltd. v. State of Bihar [Telco Ltd. v. State of Bihar, (1964) 6 SCR 885 : AIR 1965 SC 40] . The following *passage from the decision is apposite : (AIR p. 47, para 27)*

> *'27. ... **Gower has classified seven categories of cases where the veil of a corporate body has been lifted. But, it would not be possible to evolve a rational, consistent and inflexible principle which can be invoked in determining the question as to whether the veil of the corporation should be lifted or not. Broadly stated, where fraud is intended to be prevented, or trading with an enemy is sought to be defeated, the veil of a corporation is lifted by judicial decisions and the shareholders are held to be the persons who actually work for the corporation**.'*

27. In D.H.N. Food Distributors Ltd. v. Tower Hamlets London Borough Council [D.H.N. Food Distributors Ltd. v. Tower Hamlets London Borough Council, (1976) 1 WLR 852 (2) : (1976) 3 All ER 462 (CA)] the Court of Appeal dealt with a group of companies. Lord Denning quoted with approval the statement in Gower's Company Law that

> *'there is evidence of a general tendency to ignore the separate legal entities of various companies within a group, and to look instead at the economic entity of the whole group'.*
>
> *The learned Master of Rolls observed that 'this group is virtually the same as a partnership in which all the three companies are partners'. He called it a case of "three in one" — and, alternatively, as "one in three".*

28. The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejwant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/or members of his family and [Ed. : The word "and" has been emphasised in original.] that the device of incorporation was really a ploy adopted for committing illegalities and/or to defraud people."

(emphasis in original)

***37**. It is thus clear that, where a statute itself lifts the corporate veil, or where protection of public interest is of paramount importance, or where a company has been formed to evade obligations imposed by the law, the court will disregard the corporate veil. Further, this principle is applied even to group companies, so that one is able to look at the economic entity of the group as a whole.*"

(emphasis supplied)

201. FHL contends that it is an independent juristic entity, that it derived no benefit from the sale of the shares, and that it was wholly unaware of the actions of Judgment Debtors No. 1 and 6, who, at the relevant time,

exercised complete control over the promoter holding structure and indirectly held more than 70% of the shareholding in FHL. This submission, however, cannot be accepted at this stage. The very purpose of piercing the corporate veil is to ascertain whether the corporate personality was merely a legal facade concealing the acts of those who were, in reality, directing and controlling the affairs of the company. If FHL functioned as the alter ego or instrumentality of Judgment Debtors No. 1 and 6, its plea of complete ignorance cannot be accepted at face value without first undertaking a factual enquiry. The question is not whether FHL has, at this stage, been complicit in the impugned transactions, but whether the corporate structure was utilised to facilitate the systematic dissipation of the promoter shareholding which constituted one of the principal assets available for satisfaction of the Award. The unencumbered promoter shareholding, which was capable of being proceeded against in execution, stood progressively alienated through a series of transactions undertaken during the subsistence of judicial assurances. Whether those transactions were independent commercial dealings or formed part of a coordinated exercise to defeat the execution of the Award is precisely the issue that necessitates a forensic audit. To permit the plea of separate corporate personality to foreclose such an enquiry would be to allow the corporate form itself to become an instrument for frustrating the administration of justice.

202. At this juncture, it is necessary to discuss the relevant SEBI regulations which applies to listed entities to put a check on listed companies and its promoters dealing with the shares of such companies.

203. Regulations 8, 9(4) and 9(4)(iii) of the PIT Regulations, mandates the Board of Directors of every company whose securities are listed on a stock

exchange to formulate and publish on its website, a code of practice and procedure for fair disclosure of unpublished price sensitive information that the company should follow in order to adhere to the principles which have been set out in Schedule A to the Regulations. Regulations 8, 9(4), 9(4)(iii) are being reproduced as under:-

> *"8. The board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.*
>
> *NOTE: This provision intends to require every company whose securities are listed on stock exchanges to formulate a stated framework and policy for fair disclosure of events and occurrences that could impact price discovery in the market for its securities. Principles such as, equality of access to information, publication of policies such as those on dividend, inorganic growth pursuits, calls and meetings with analysts, publication of transcripts of such calls and meetings, and the like are set out in the schedule.*
>
> *(2) Every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.*
>
> *NOTE: This provision is aimed at requiring transparent disclosure of the policy formulated in sub-regulation (1)."*

"9.(4) For the purpose of sub regulation (1) and (2), the board of directors or such other analogous authority shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation and shall include:-

*****

(iv) All promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries;"

204. Material on record discloses that there were analogous provisions mentioned in the old PIT Regulations which were applicable at the time of transactions that led to dissipation of shares. The relevant provisions are reproduced hereunder:

"Code of Fair Disclosure.

8. (1) The board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.

NOTE: This provision intends to require every company whose securities are listed on stock exchanges to formulate a stated framework and policy for fair disclosure of events and occurrences that could *impact price discovery in the market for its securities. Principles such as, equality of access to information, publication of policies such as those on dividend, inorganic growth pursuits, calls and meetings with analysts, publication of transcripts of such calls and meetings, and the like are set out in the schedule.*

(2) Every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

NOTE: This provision is aimed at requiring transparent disclosure of the policy formulated in sub-regulation (1).

Code of Conduct.

9. (1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

NOTE: It is intended that every company whose securities are listed on stock exchanges and every market intermediary registered with SEBI is mandatorily required to formulate a code of conduct governing trading by its employees. The standards set out in the schedule are required to be addressed by such code of conduct.

(2) Every other person who is required to handle unpublished price sensitive information in the course

of business operations shall formulate a code of conduct to regulate, monitor and report trading by employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

NOTE: This provision is intended to mandate persons other than listed companies and market intermediaries that are required to handle unpublished price sensitive information to formulate a code of conduct governing trading in securities by their employees. These entities include professional firms such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting or advising listed companies, market intermediaries and other capital market participants. Even entities that normally operate outside the capital market may handle unpublished price sensitive information. This provision would mandate all of them to formulate a code of conduct.

(3) Every listed company, market intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.

NOTE: This provision is intended to designate a senior officer as the compliance officer with the responsibility to administer the code of conduct and monitor compliance with these regulations."

205. In compliance of these Regulations, FHL has brought out a policy/code of conduct. The code of conduct as brought out by the FHL shows that the objective of the code of conduct is to outline the prohibitions relating to insider trading and the procedure to be followed when dealing

with the company's security/unpublished price sensitive information which has to be followed to ensure compliance to regulatory norms. The said code applicable at the time of transactions, effective from 15th May, 2015, defines a 'Connected Person' in the 'Definitions' clause (d) which is reproduced to read as under:-

> *"**(d) "Connected Person" means***
>
> ***(i) any person who is or has during the six months prior to the concerned act been associated with the company, directly or indirectly, in any capacity including by reason of frequent communication with its officers, or, by being in any contractual, fiduciary or employment relationship, or by being a director, officer or an employee of the Company or holds any position including a professional or business relationship between himself and the Company, whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.***
>
> *(ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established:*
>
> > *(a) An immediate relative of connected persons specified in clause (i) above; or*
> >
> > *(b) A holding company or associate company or subsidiary company; or*
> >
> > *(c) An intermediary as specified in section 12 of the Act or an employee or a director thereof; or*

(d) An investment company, trustee company, asset management company or an employee or director thereof; or

(e) An official of a stock exchange or of clearing house or corporation; or

(f) A member of board of trustees of a mutual fund or a member of the board of directors of asset management company of a mutual fund or is an employee thereof;

(g) A member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013.

(h) An official or an employee of a self-regulatory organization recognized or authorized by the Board; or

(i) A banker of the Company; or

(j) A concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent of the holding or interest;

(iii) Employees and other persons as notified by the Promoter Group Companies from time to time.

This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any

> *company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information."*
>
> (emphasis supplied)

206. The Judgment Debtors No.1 and 6 at the relevant time when the assurances were given till February, 2018 were Connected Persons being the Chairman and Vice-Chairman, and also the Managing Director and Director of FHL respectively.

207. Clause (e) of the 'Definitions' defines 'Designated Employees' to reads as under:-

> *"(e)* ***"Designated Employees" in relation to Company shall include –***
>
> ***i. Managing Director and Whole-time Director(s) (by whatever name called for the time being)***
>
> ***ii. Other Directors***
>
> *iii. Chief Executive Officer, Chief Financial Officer and Company Secretary*
>
> *iv. All direct reports of persons mentioned at (i), (ii) & (iii)*
>
> *v. All Function / Department Heads*
>
> *vi. Such other persons as the Compliance Officer may notify from time to time basis seniority and professional designation and role and criticality of function that may entail such person to have availability of UPSI."*
>
> (emphasis supplied)

208. Clause (f) of the 'Definitions' defines 'Director(s)' to read as under:-

"(f) "Director(s)" means the member of Board of Directors of the Company as in force from time to time."

209. Clause (i) of the 'Definitions' defines 'Insider' which is being reproduced and reads as under:-

*"(i) **"Insider" means any person who is:***

(i) a connected person, or

(ii) in possession of or having access to unpublished price sensitive information.

Since "generally available information" is defined, it is intended that anyone in possession of or having access to UPSI should be considered an "insider" regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to UPSI. The onus of showing that a certain person was in possession of or had access to UPSI at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to UPSI may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances."

(emphasis supplied)

A perusal of the above-mentioned regulations would establish that the then directors of FHL, JD No.1 and 6, were Connected Persons, and therefore, Insiders as per the Code of Conduct applicable at that time.

210. Clause (k), (p) and (r) of the 'Definitions' clause is being reproduced to read as under:-

> *"(k) "Promoter" shall have the meaning assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 or any modification thereof;*
>
> *xxx*
>
> *(p) "Trading" / Dealing in Securities means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly;*
>
> *Under the parliamentary mandate, since the Section 12A (e) and Section 15G of the Act employs the term 'dealing in securities', it is intended to widely define the term "trading" to include dealing. Such a construction is intended to curb the activities based on unpublished price sensitive information which are strictly not buying, selling or subscribing, such as pledging etc. when in possession of unpublished price sensitive information.*
>
> *xxx*
>
> *(r) "Unpublished Price Sensitive Information" ('UPSI') means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following:-*
>
> *(i) financial results;*
> *(ii) dividends;*
> *(iii) change in capital structure;*

(iv) mergers, demergers, acquisitions, delisting, disposal and expansion of business and such other transactions;
(v) changes in Key Managerial Personnel; and
(vi) material events in accordance with the listing agreement.

It is intended that Information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. "

211. Chapter 2 of the Code of Conduct, more specifically Regulation 2.1.2 provided the Compliance Officer of FHL a duty to report changes in designated persons, details of trading plans received, pre-clearance given, or any violations of the regulations. The relevant extract is provided hereunder:

"2.1 Compliance Officer and his role in prevention of Insider Trading

2.1.1 Company Secretary of the Company or any other person as designated by the Board of Directors of the Company, to act as the Compliance Officer and shall be responsible for setting forth policies, procedures and monitoring adherence to the rules for the preservation of UPSI, pre-clearing and monitoring of trades and the implementation of this Code under the overall supervision of the Board of Directors of the Company.

2.1.2 The Compliance Officer shall report to the Board of Directors and shall provide reports to the Audit and Risk Management Committee (by whatever name called) on quarterly basis, the changes in Designated Employees, the details of trading plans received, pre-clearance given and / or any violation of the Regulations reported.

2.1.3 The Compliance Officer shall maintain a record of the Designated Employees and any changes made in the list of Designated Employees.

2.1.4 The Compliance Officer shall assist all the persons in addressing any clarification regarding this Code and the Regulations."

(emphasis supplied)

212. Regulation 3.1 and 3.2 of the Code of Conduct specifies that all Designated Employees would conduct all their dealings in securities of the Company in a valid Trading Window subject to pre-clearance by the Compliance Officer of the Company. As per the Code of Conduct at the relevant time, the Compliance Officer had the power to restrict the trades by Designated Employees and also an obligation to maintain a list of securities which were not allowed to be traded. The relevant extract of the Regulations is reproduced hereunder:

"3.1 Trading Window

3.1.1 The Company shall specify a trading period, to be called "Trading Window", for trading in the Company's securities. When the Trading Window is closed, all Designated Employees (including their immediate relatives) shall not trade in the Company's securities in such period. The trading window shall be closed during the time the information referred to in para 3.1.3 is unpublished.

3.1.2 The Trading Window is also applicable to any person having contractual or fiduciary relation with the Company, such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting or advising the Company.

3.1.3 The trading window shall be, inter alia, closed:—

(a) From the date of announcement of Board Meeting for Declaration of financial results;

(b) From the date of announcement of Board Meeting for Declaration of Dividends;

(c) From the date of announcement of Board Meeting held to approve change in Capital Structure or further issuance of securities by way of Public/Right/Bonus, etc.;

(d) From the date of announcement of Board Meeting held to approve Mergers, de-mergers, takeovers, acquisitions, buy-back, delisting, disposals and expansion of business and such other transactions;

(e) From the date of announcement of Change(s) in Key Managerial Personnel;

(f) From the date of announcement of such Material events in accordance with the listing agreement; and

(g) For such period and for any such other event as may be deemed fit by the Compliance Officer.

3.1.4 The time for re-opening of trading window shall be determined by the Compliance Officer taking into account various factors including the UPSI in question becoming generally available and being capable of assimilation by the market, which in any event shall not be earlier than 48 hours after the information referred to in para 3.1.3 becomes public / generally available.

3.1.5 All Designated Employees (including their immediate relatives) shall conduct all their dealings in the Securities of the Company only in a valid trading

window after procuring pre-clearance (as mentioned under Form II) as referred under clause 3.2 of this Code, or as per approved trading plan and shall not deal in any transaction involving the purchase or sale of the Company's Securities during the periods when trading window is closed, or during any other period as may be specified by the Company from time to time.

3.2 Pre- clearance of Trades:

3.2.1 All Designated Employees and their immediate relatives who intends to deal in the Securities of the Company, when the trading window is open, shall get the intended transactions, in the Securities of the Company pre cleared, as per the pre-dealing procedure as described hereunder.

3.2.2 Where any transaction has been approved, the Designated Employees and their immediate relatives shall execute the order within seven trading days of the clearance of the transaction and where any transaction has been approved with any additional restrictions, the same shall be executed within the above time in accordance with the additional restrictions specified. If the order is not executed within seven trading days after the approval is given, the Designated Employees must get the transaction pre cleared again.

3.2.3 Application for pre-clearance should be submitted to Compliance Officer at least two trading days prior to the trade and Compliance Officer to dispose-off / clear the application within 1 trading day from the receipt of the application. However, if no communication is received from the Compliance Officer within 1 trading day, the application for pre-clearance shall be deemed to be rejected. In case, the applicant is not satisfied with the decision of the Compliance Officer or no communication received within 1 trading day of

submitting the application, he may appeal to the Chairman of the Company immediately, who shall dispose-off such appeal within 1 trading day of the receipt of such application and the Chairman's decision shall be final and binding on the applicant.

3.2.4 The Compliance Officer shall have a right to revoke any clearance granted to any transaction or add further additional restrictions to any clearance, before the relevant transaction has been executed.

3.2.5 Trades of the Compliance Officer which requires pre-clearance in terms of the above shall be approved by the Chairman of the Company and the responsibilities with regard to Compliance Officer shall lie on the Chairman mutatis mutandis. Further, in this case the decision of Chairman shall be final and non-appealable.

3.2.6 Pre-clearance of trade would be applicable wherever Designated Employees and their immediate relatives intend to deal in the Securities of the Company, when the trading window is open, in excess of 500 (Five Hundred) securities cumulatively. Provided that in such case and intimation of trade to be given to the Compliance Officer within 1 (One) Trading Day of execution of such trade with a confirmation that deal was not done while in possession of any UPSI. No Designated Employee shall apply for pre-clearance of any proposed trade if such Designated Employee is in possession of UPSI even if the Trading Window is not closed.

3.2.7 The Compliance Officer shall confidentially maintain a list of such securities as a "restricted list" which shall be used as the basis for approving or rejecting applications for preclearance of trades.

3.2.8 All applications in 'Form II' shall be made to the Compliance Officer, indicating the estimated number of *securities that Designated Employees and their immediate relatives intends to deal in and details of depository with which he/she has a depository account and such other details as may be required by any rule made by the Company in this behalf.*

3.2.9 An Undertaking under 'Form II' shall be executed in favour of the Company by such Designated Employee (including his relatives) who intends to deal in the securities of the Company to the effect that the applicant for pre-clearance is not in possession of any UPSI.

3.2.10 The following formats are forming part of the Code of the Company to monitor compliance with the Regulations:-

(i) Pre-clearance of Trades (Ref Form II);

(ii) Reporting of Trades executed/not executed after securing pre-clearance, recording of reasons for such decisions and for reporting level of holdings in securities (Ref Form III), such disclosure(s) shall be made within 7 days of execution / non-execution of pre-clearance.

(iii) Annual disclosure of holding as on March 31, by all Designated Employees to be taken every year within 30 days from the end of financial year (Ref Form IV)."

(emphasis supplied)

213. The Decree Holder has emphasized that JD No. 1 and 6, being the directors of FHL, had to get their trades pre-cleared by the Compliance Officer before the execution of any transaction. On the other hand, FHL contends that JD No. 1 and 6 fall outside these definitions because the shares were technically held by FHHPL, making FHHPL the statutory promoter

entity. According to FHL, at the time the shares were sold, they were held exclusively by this promoter entity rather than the Judgment Debtors personally. FHL further argues that promoter entities did not fall within the ambit of Designated Employees at the time of these transactions, rendering the regulations inapplicable to the sale. This contention though very attractive does not merit acceptance keeping in mind the shareholding and control of JD No.1, JD No.6 and other Judgment Debtors in FHHPL.

214. Moreover, the contention of FHL overlooks the wider statutory conception of a "Promoter" under the SEBI regulatory framework. Regulation 2(1)(oo) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, defines a "promoter" to include, *inter alia*, any person who is in control of the issuer, whether such control is exercised directly or indirectly. The said Regulation reads as under:-

> *"2(1) (oo) "promoter" shall include a person:*
>
> *i) who has been named as such in a draft offer document or offer document or is identified by the issuer in the annual return referred to in section 92 of the Companies Act, 2013; or*
>
> ***ii)who has control over the affairs of the issuer, directly or indirectly whether as a shareholder, director or otherwise; or***
>
> *iii) in accordance with whose advice, directions or instructions the board of directors of the issuer is accustomed to act: Provided that nothing in sub-clause (iii) shall apply to a person who is acting merely in a professional capacity;*
>
> *Provided further that a financial institution, scheduled commercial bank, [foreign portfolio investor*

other than individuals, corporate bodies and family offices], mutual fund, venture capital fund, alternative investment fund, foreign venture capital investor, insurance company registered with the Insurance Regulatory and Development Authority of India or any other category as specified by the Board from time to time, shall not be deemed to be a promoter merely by virtue of the fact that twenty per cent. or more of the equity share capital of the issuer is held by such person unless such person satisfy other requirements prescribed under these regulations;"

(emphasis supplied)

215. The definition of 'promoter' stipulated in SEBI ICDR Regulations, 2009 which were applicable from the first assurance is as follows:-

"2.(1) (za) "promoter" includes:

(i) the person or persons who are in control of the issuer;

(ii) the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;

(iii) the person or persons named in the offer document as promoters: Provided that a director or officer of the issuer or a person, if acting as such merely in his professional capacity, shall not be deemed as a promoter:

Provided further that a financial institution, scheduled bank, foreign institutional investor and mutual fund shall not be deemed to be a promoter merely by virtue of the fact that ten per cent. or more of the equity share capital of the issuer is held by such person; Provided further that such financial institution, scheduled bank and foreign institutional investor shall be *treated as promoter for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;"*

(emphasis supplied)

216. The regulatory framework, therefore, recognises not merely the immediate shareholder or promoter entity but also the natural persons who ultimately exercise control over the issuer company through intermediate corporate vehicles. It is an admitted position that FHHPL was wholly controlled by Judgment Debtors Nos. 1 and 6 through their downstream entities and functioned merely as the promoter holding entity of FHL. Consequently, Judgment Debtors Nos. 1 and 6 continued to remain within the ambit of the promoter framework recognised under the SEBI regulations notwithstanding that the shares stood registered in the name of FHHPL.

217. The expression 'control' is defined in Section 2(27) of the Companies Act, 2013. The relevant extract is reproduced hereunder:

> **"*(27)"control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;*"** (emphasis supplied)

218. The use of the word 'shall include' indicates that this definition is only illustrative and not exhaustive. The meaning of 'Control' is not limited to these expressions alone, rather they are indicators of what constitutes Control. The indications of what includes control, has been broadly divided into two categories. The first part refers to *de jure* control, which includes

the right to appoint a majority of the Directors of the company. The second part refers to *de facto* control. So long as a person or persons acting in concert, directly or indirectly, can positively influence, in any manner, management or policy decisions, they could be said to be in control of the company. A management decision is a decision to be taken as to how the corporate body is to be run in its day-to-day affairs. A policy decision would constitute a decision that would be beyond running day-to-day affairs i.e. long term decisions. So long as management or policy decisions can be, or are in fact, taken by virtue of shareholding, management rights, shareholder agreements, voting agreements, or otherwise, control can be said to exist.

219. It is a matter of record that FHHPL is entirely owned by JD No. 1 and 6 through their network of intermediary entities. Consequently, piercing the corporate veil of these intertwined entities reveals that JD No. 1 and 6 are the true controlling minds behind all the Judgment Debtors. Accordingly, the mere interposition of FHHPL as the registered promoter entity cannot be relied upon to contend that trades by FHHPL stood outside the regulatory framework governing Designated Persons. The legal principles laid down by the Apex Court in Renusagar Power Co. (*supra*) apply squarely to the facts of this case. Furthermore, because JD No. 1 and 6 served as Directors of FHL, they fall squarely within the statutory definition of Designated Persons and are strictly bound by the four corners of the regulations.

220. The PIT Regulations, particularly Clause 6 of Schedule B of the PIT Regulations read with paragraph 3.2.5 of the FHL Policy mandates that any transfer or trading of securities by Designated Persons which includes the JD No. 1 and 6 could not have happened without obtaining express pre-clearance from FHL i.e., the company in which they held shares.

221. Learned Senior Counsel for the Decree Holder has argued that the FHL Policy lays down the requirements and procedure to be followed by Designated Persons to receive the prior approval of FHL before trading in securities which would include 'creation of pledge', 'invocation of pledge' and 'revocation of pledge' of shares. It is stated that the Compliance Officer is responsible for pre-clearance and has to report to the Board and provide reports on the pre-clearances. The pre-clearance is required where one transaction or a series of transactions exceeds Rs. 10,00,000/- cumulatively in any calendar quarter. The Designated Employees have to submit to the Compliance Officer an application under Form-II and that application has to be disposed of by the Compliance Officer whereafter, the Compliance Officer proceeds to issue pre-clearance order under Form-II agreeing or rejecting the request of the Designated Employees. Only after the clearance of the Compliance Officer, the Designated Persons can execute the transaction. On the other hand, Ld. Senior Counsels for FHL have stated that FHHPL was not a designated employee and therefore, was not required to undergo any of these steps, on the date of the transactions.

222. The aforesaid contention is attractive and warrants consideration. FHHPL was not strictly a designated employee under the Code of Conduct of FHL and there may have been no obligation to seek pre trade clearance, insofar as FHHPL shares in FHL were concerned, as on the date on which these transactions took place. But this by itself would not mean that FHL was not complicit in these transactions, or involved in the dissipation of the assets of the Judgment Debtors, and part of the ploy to defeat the interests of Decree Holder, while at the same insulting the majesty of this Court. This is exacerbated by the fact that JD 1 and JD 6 were in control of FHL, and all

downstream entities. JD1 and JD 6 therefore not only controlled FHHPL but also FHL. JD1 and JD 6, were simultaneously instructing their counsels to give assurances to the Court and also dissipating the assets which were the subject matter of the assurances, through FHHPL. The Court therefore cannot throw up its hand and refrain itself from unveiling the fraud perpetuated on the Court, for which a forensic audit is necessary. The undertakings by the JDs and their downstream entities cannot be construed to be limited to their own personal shares in FHL, but must also include shares held by FHHPL. This is because FHHPL is obviously the alter ego of JD 1 and JD 6 and the shares of FHL were held by FHHPL. FHHPL was also the primary asset base of JD 1 and JD6, for which assurances were given to the Court. If these were to be excluded, the assurances would also have no value.

223. If the mandated steps had actually not been taken, it would render FHL complicit in the dissipation of 5.29 crores of unencumbered shares. Furthermore, this context defines the assurances given by JD 1 and JD 6, who fall squarely within the definition of designated persons. At the relevant point in time, these Designated Persons violated the Orders, and it has to be seen as to whether FHL has aided and abetted its Directors/Designated Persons to trade in the shares without the approval of FHL. If the answer is yes, then FHL has aided and abetted the JDs in dissipating the shareholdings of the company, which constituted the very assets of the JDs meant for satisfying the decree. As a listed company, FHL was duty bound and strictly obliged to follow the regulations. If FHL takes the stand that it is independent of the Board of Directors and is therefore not responsible, such an argument does not merit acceptance. The JDs were essentially the

company itself, acting as the majority shareholders and holding the position of Managing Director and Director, which precludes the company from hiding behind a corporate veil. The Company cannot simply throw off its hands and evade liability by claiming that it is an independent juristic person.

224. In order to ascertain the exact role and complicity of the Compliance Officer, or other officer(s) of FHL in the sale of FHL shares of JD No. 1 and 6 held by them through FHHPL, a forensic audit is warranted.

225. It has specifically been pleaded by FHL that the company, being a separate entity from the JDs, did not have any knowledge of the assurances given by these JDs. This argument does not merit acceptance. JD No. 1 and JD No. 6 served as the Managing Director and Director of the company, and were also its majority stakeholders, and therefore, the heart, soul and brain and the decision makers of FHL. Their personal knowledge is directly attributable to the knowledge of the company. In the opinion of this Court, the facade and charade of distinct bodies has been played for evading the execution proceedings. It is extremely convenient for FHL to fake ignorance and raise the defence of being a separate legal entity, but it is precisely important to quell such frauds from taking place by applying the doctrine of lifting the corporate veil at the very first instance.

226. Apart from the fact that PIT Regulations and FHL's Code of Conduct which may have been violated, attention has also been drawn to LODR Regulations. Regulation 30 and Schedule-III of the LODR Regulations as applicable at the time of first status quo order, reads as under:

"Disclosure of events or information.

30.(1) Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.

(2) Events specified in Para A of Part A of Schedule III are deemed to be material events and listed entity shall make disclosure of such events.

(3) The listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4).

(4) (i) The listed entity shall consider the following criteria for determination of materiality of events/ information:

> *(a) the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or*
>
> ***(b the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;***
>
> *(c) In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the opinion of the board of directors of listed entity, the event / information is considered material.*

ii) The listed entity shall frame a policy for determination of materiality, based on criteria specified in this sub-regulation, duly approved *by its board of directors, which shall be disclosed on its website.*

(5) The board of directors of the listed entity shall authorize one or more Key Managerial Personnel for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange(s) under this regulation and the contact details of such personnel shall be also disclosed to the stock exchange(s) and as well as on the listed entity's website.

(6) The listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information: Provided that in case the disclosure is made after twenty four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay:

Provided further that disclosure with respect to events specified in sub-para 4 of Para A of Part A of Schedule III shall be made within thirty minutes of the conclusion of the board meeting.

(7) The listed entity shall, with respect to disclosures referred to in this regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.

(8) The listed entity shall disclose on its website all such events or information which has been disclosed to stock exchange(s) under this regulation , and such disclosures shall be hosted on

the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.

(9) The listed entity shall disclose all events or information with respect to subsidiaries which are material for the listed entity.

(10) The listed entity shall provide specific and adequate reply to all queries raised by stock exchange(s) with respect to any events or information: Provided that the stock exchange(s) shall disseminate information and clarification as soon as reasonably practicable.

(11) The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s).

(12) In case where an event occurs or an information is available with the listed entity, which has not been indicated in Para A or B of Part A of Schedule III, but which may have material effect on it, the listed entity is required to make adequate disclosures in regard thereof.

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SCHEDULE III

PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES

[See Regulation 30]

The following shall be events/information, upon occurrence of which listed entity shall make disclosure to stock exchange(s):

A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30):

1. Acquisition(s) (including agreement to acquire), Scheme of Arrangement (amalgamation/ merger/ demerger/restructuring), or sale or disposal of any unit(s), division(s) or subsidiary of the listed entity or any other restructuring. Explanation.- For the purpose of this sub-para, the word 'acquisition' shall mean,-

(i) acquiring control, whether directly or indirectly; or,

(ii) acquiring or agreeing to acquire shares or voting rights in, a company, whether directly or indirectly, such that –

(a) the listed entity holds shares or voting rights aggregating to five per cent or more of the shares or voting rights in the said company, or;

b) there has been a change in holding from the last disclosure made under sub-clause (a) of clause (ii) of the Explanation to this sub-para and such change exceeds two per cent of the total shareholding or voting rights in the said company.

2. Issuance or forfeiture of securities, split or consolidation of shares, buyback of securities, any restriction on transferability of securities or alteration in terms or structure of existing securities including forfeiture, reissue of forfeited securities, alteration of calls, redemption of securities etc.

3. Revision in Rating(s).

4. Outcome of Meetings of the board of directors: The listed entity shall disclose to the Exchange(s), within 30 minutes of the closure of the meeting, held to consider the following:

a) dividends and/or cash bonuses recommended or declared or the decision to pass any dividend and the date on which dividend shall be paid/dispatched;

b) any cancellation of dividend with reasons thereof;

c) the decision on buyback of securities;

d) the decision with respect to fund raising proposed to be undertaken

e) increase in capital by issue of bonus shares through capitalization including the date on which such bonus shares shall be credited/dispatched;

f) reissue of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe to;

g) short particulars of any other alterations of capital, including calls;

h) financial results;

i) decision on voluntary delisting by the listed entity from stock exchange(s).

5. Agreements (viz. shareholder agreement(s), joint venture agreement(s), family settlement agreement(s) (to the extent that it impacts management and control of the listed entity), agreement(s)/treaty(ies)/contract(s) with media companies) which are binding and not in normal course of business, revision(s) or amendment(s) and termination(s) thereof.

6. Fraud/defaults by promoter or key managerial personnel or by listed entity or arrest of key managerial personnel or promoter.

7. Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer , Company Secretary etc.), Auditor and Compliance Officer.

8. Appointment or discontinuation of share transfer agent.

9. Corporate debt restructuring.

10. One time settlement with a bank.

11. Reference to BIFR and winding-up petition filed by any party / creditors.

12. Issuance of Notices, call letters, resolutions and circulars sent to shareholders, debenture holders or creditors or any class of them or advertised in the media by the listed entity.

13. Proceedings of Annual and extraordinary general meetings of the listed entity.

14. Amendments to memorandum and articles of association of listed entity, in brief.

15. Schedule of Analyst or institutional investor meet and presentations on financial results made by the listed entity to analysts or institutional investors;

B. Events which shall be disclosed upon application of the guidelines for materiality referred sub-regulation (4) of regulation (30):

1. Commencement or any postponement in the date of commencement of commercial production or commercial operations of any unit/division.

2. Change in the general character or nature of business brought about by arrangements for strategic, technical, manufacturing, or marketing tie-up, adoption of new lines of business or closure of operations of any unit/division (entirety or piecemeal).

3. Capacity addition or product launch.

4.Awarding, bagging/ receiving, amendment or termination of awarded/bagged orders/contracts not in the normal course of business.

5. Agreements (viz. loan agreement(s) (as a borrower) or any other agreement(s) which are binding and not in normal course of business) and revision(s) or amendment(s) or termination(s) thereof.

6. Disruption of operations of any one or more units or division of the listed entity due to natural calamity (earthquake, flood, fire etc.), force majeure or events such as strikes, lockouts etc.

7. Effect(s) arising out of change in the regulatory framework applicable to the listed entity

8. Litigation(s) / dispute(s) / regulatory action(s) with impact.

9. Fraud/defaults etc. by directors (other than key managerial personnel) or employees of listed entity.

10. Options to purchase securities including any ESOP/ESPS Scheme.

11. Giving of guarantees or indemnity or becoming a surety for any third party.

12. Granting, withdrawal , surrender , cancellation or suspension of key licenses or regulatory approvals.

C. Any other information/event viz. major development that is likely to affect business, e.g. emergence of new technologies, expiry of patents, any change of accounting policy that may have a significant impact on the accounts, etc. and brief details thereof and any other information which is exclusively known to the listed entity which may be necessary to enable the holders of securities of the listed entity to appraise its position and to avoid the establishment of a false market in such securities.

D. Without prejudice to the generality of para (A), (B) and (C) above, the listed entity may make disclosures of event/information as specified by the Board from time to time.

PART B: DISCLOSURE OF INFORMATION HAVING BEARING ON PERFORMANCE/OPERATION OF LISTED ENTITY AND/OR PRICE SENSITIVE INFORMATION: NON-CONVERTIBLE DEBT SECURITIES & NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES

[See Regulation 51(2)]

A. The listed entity shall promptly inform to the stock exchange(s) of all information which shall have bearing on performance/operation of the listed entity or is price sensitive or shall affect payment of interest or dividend of non-convertible preference shares or redemption of non convertible debt securities or redeemable preference shares including :

(1) expected default in timely payment of interests/preference dividend or redemption or repayment amount or both in respect of the non-convertible debt securities and non-convertible redeemable preference shares and also default in creation of security for debentures as soon as the same becomes apparent;

(2) any attachment or prohibitory orders restraining the listed entity from transferring non-convertible debt securities or non-convertible redeemable preference shares from the account of the registered holders along-with the particulars of the numbers of securities so affected , the names of the registered holders and their demat account details;

(3) any action which shall result in the redemption, conversion, cancellation, retirement in whole or in part of any non-convertible debt

securities or reduction, redemption, cancellation, retirement in whole or in part of any non-convertible redeemable preference shares;

(4) any action that shall affect adversely payment of interest on non-convertible debt securities or payment of dividend on non-convertible redeemable preference shares including default by issuer to pay interest on non-convertible debt securities or redemption amount and failure to create a charge on the assets;

(5) any change in the form or nature of any of its non-convertible debt securities or non-convertible redeemable preference shares that are listed on the stock exchange(s) or in the rights or privileges of the holders thereof and make an application for listing of the securities as changed, if the stock exchange(s) so require;

(6) any changes in the general character or nature of business / activities, disruption of operation due to natural calamity, and commencement of commercial production / commercial operations;

(7) any events such as strikes and lock outs. which have a bearing on the interest payment/ dividend payment / principal repayment capacity;

(8) details of any letter or comments made by debenture trustees regarding payment/non-payment of interest on due dates, payment/non-payment of principal on the due dates or any other matter concerning the security, listed entity and /or the assets along with its comments thereon, if any;

(9) delay/ default in payment of interest or dividend / principal amount /redemption for a period of more than three months from the due date;

(10) failure to create charge on the assets within the stipulated time period;

(11) any instance(s) of default/delay in timely repayment of interests or principal obligations or both in respect of the debt securities including, any proposal for re-scheduling or postponement of the repayment programmes of the dues/debts of the listed entity with any investor(s)/lender(s). Explanation.- For the purpose of this sub-para, 'default' shall mean Non-payment of interest or principal amount in full on the pre-agreed date and shall be recognized at the first instance of delay in servicing of any interest or principal on debt.

(12) any major change in composition of its board of directors, which may amount to change in control as defined in Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;

(13) any revision in the rating;

(14) the following approvals by board of directors in their meeting:-

(a) the decision to pass any interest payment;

(b) short particulars of any increase of capital whether by issue of bonus securities through capitalization, or by way of right securities to be offered to the debenture holders, or in any other way;

(15) all the information, report, notices, call letters, circulars, proceedings, etc concerning non-convertible redeemable preference shares or non convertible debt securities;

(16)any other change that shall affect the rights and obligations of the holders of non-convertible debt securities / non-convertible redeemable preference shares, any other information not in the public domain necessary to enable the holders of the listed securities to clarify its position and to avoid the creation of a false market in such listed securities or any other information having bearing on the operation/performance of the listed entity as well as price sensitive information.

PART C: DISCLOSURES OF MATERIAL EVENTS OR INFORMATION: INDIAN DEPOSITORY RECEIPTS

[See Regulation 68(2)]

A. The listed entity shall promptly inform to the stock exchange(s) of all events which are material and/or all information which are price sensitive or have bearing on performance/operation of the listed entity at the same time and to the extent it intimates to the listing authority or any other authority in its home country or other jurisdictions where its securities may be listed or other stock exchange(s) in its home country or other jurisdictions where its securities may be listed including:

(1) any action or investigations initiated by any regulatory or statutory authority and the purpose for which it was initiated.

(2) any attachment or prohibitory orders restraining the listed entity from transferring securities out of the names of the registered holders and particulars of the registered holders thereof.

(3) the meeting of the board of directors which has been held to consider or decide on the following :

(a) all dividends and/or cash bonuses recommended or declared or the decision to pass any dividend or cash bonus;

(b) the total turnover, gross profit/loss, provision for depreciation, tax provisions and net profits for the year (with comparison with the previous year) and the amounts appropriated from reserves, capital profits, accumulated profits of past years or other special source to provide wholly or partly for any dividend, even if this calls for qualification that such information is provisional or subject to audit;

(c) the recommendation or declaration of dividend or rights issue or issue of convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of the dividend

(d) any decision on buy back of equity shares of the listed entity,;

(4) Change in

(a) board of directors of listed entity by death, resignation, removal or otherwise;

(b) managing director;

(c) auditors appointed to audit the books and accounts;

(d) the compliance officer;

(e) the registrar to an issue and/or share transfer agent, domestic depository or the overseas custodian bank;

(5) any change in the rights attaching to any class of equity shares into which the Indian Depository Receipts are exchangeable;

(6) short particulars of any increase of capital whether by issue of bonus shares through capitalization, or by rights issue of equity shares, or in any other manner;

(7) short particulars of the reissues of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe thereto;

(8) short particulars of any other alterations of capital, including calls;

(9) in the event of the listed entity granting any options to purchase any Indian Depository Receipts the following particulars::

(a) the number of Indian Depository Receipts covered by such options, terms thereof and the time within which they may be exercised;

(b) any subsequent changes or cancellation or exercise of such options;

(10) Notices, resolutions, circulars, call letters or any other circulars etc. issued or advertised anywhere with respect to:

(a) proceedings at all annual and extraordinary general meetings of the listed entity, including notices of meetings and proceedings of meeting;

(b) amendments to its constitutional documents as soon as they have been approved by the listed entity in general meeting;

(c) compliance with requirements in home country or in other jurisdictions where such securities are listed;

(d) any merger, amalgamation, re-construction, reduction of capital, scheme or arrangement involving the listed entity including meetings of equity shareholders, IDR Holders or any class of them and proceedings at all such meetings;

(11) any other information necessary to enable the IDR Holders to appraise the listed entity's position and to avoid the establishment of a false market in IDRs;

B. The listed entity shall, apart from complying with all specific requirements as above, intimate the stock exchange(s) immediately of events such as strikes, lock outs, closure on account of power cuts, etc. and other material events or price sensitive information or events which shall have a material bearing on the performance / operations of the listed entity both at the time of occurrence of the event and subsequently after the cessation of the event at the same time and as to the extent that it *discloses to holders of securities in its home country or in other jurisdictions where such securities are listed;*

C. In addition to above, the listed entity shall disclose to the stock exchange(s), any information which is disclosed to any other overseas stock exchange(s) or made public in any other overseas securities market, on which its securities may be listed or quoted, simultaneously with such disclosure or publication, or as soon thereafter as may be reasonably practicable;

D. The listed entity shall submit to the stock exchange(s) on request any other information concerning the listed entity as the stock exchange(s) may reasonably require;

PART D: DISCLOSURE OF INFORMATION HAVING BEARING ON PERFORMANCE/ OPERATION OF LISTED ENTITY AND/OR PRICE SENSITIVE INFORMATION: SECURITISED DEBT INSTRUMENT

[See Regulation 83(2)]

A. The listed entity shall promptly inform the stock exchange(s) of all information having bearing on the performance/operation of the listed entity and price sensitive information including:

(1) any attachment or prohibitory orders restraining the listed entity from transferring securitized debt instruments from the account of the registered holders and particulars of the numbers of securitized debt instruments so affected and the names of the registered holders and their demat account details;

(2) any action that shall result in the redemption, conversion, cancellation, retirement in whole or in part of any securitized debt instruments;

(3) any action that shall affect adversely payment of interest on securitized debt instruments;

(4) any change in the form or nature of any of its securitized debt instruments that are listed on the stock exchange(s) or in the rights or privileges of the holders thereof and to make an application for listing of the said securities as changed, if the stock exchange(s) so requires;

(5) expected default in timely payment of interest or redemption or repayment amount or both in respect of the securitized debt instruments listed on the recognised stock exchange(s) as soon as the same becomes apparent;

(6) changes in the General Character or nature of business / activities, disruption of operation due to natural calamity etc;

(7) revision in rating as a result of credit rating done periodically;

(8) delay/ default in payment of interest/principal amount to the investors for a period of more than three months from the due date; and

(9) any other change that shall affect the rights and obligations of the holders of securitized debt instruments, any other information not in the public domain necessary to enable the holders of the listed securitized debt instruments to clarify its position and to avoid the creation of a false

> ***market in such listed securities or any other information having bearing on the operation/performance of the listed entity as well as price sensitive information."***
>
> (emphasis supplied)

227. The aforesaid Regulation requires disclosures to be made by a listed company. The disclosures are broadly classified into two categories: those disclosures which must compulsorily be made, and other disclosures that are to be made in the event they are material to the operations of the company. Regulation 30 has to be read in tandem with Schedule III of the PIT Regulations, which provides for a variety of situations in which disclosures have to be made by the company to the stock exchange. A bare cursory glance over Schedule III indicates several instances that would have required the company to actively make disclosures to the stock exchange about the change in shareholdings of JD No. 1 and JD No. 6 through their various holding companies. If the company has made disclosures they were obviously fully aware of the transactions that took place. This Court takes judicial notice of the fact that the present dispute is one of the most high profile foreign arbitrations that has come to India, and the same has been reported publicly in a variety of known and genuine newspapers in India. For a company of the standing of FHL, especially when its promoters are the main Judgment Debtors in the litigation, to say that they were fully unaware of the transactions in spite of public reporting, and in spite of the fact that they have given all the disclosures, makes it fully clear that they are only trying to mislead the Court by taking advantage of claiming to be a separate juristic entity.

228. Assertion of the Decree Holder primarily is that unencumbered shares of FHL held by JD No. 1 and 6 through FHHPL have been sold and many of the sales have not been properly disclosed under PIT Regulations and SAST Regulations on some pretext. The same has been vehemently opposed by FHL. Several instances have been shown by the Decree Holder that there have been several off-market transactions of the shares of FHL in connivance with FHL. However, this is a disputed question of fact.

229. The Apex Court has observed that about 3.25 crores unencumbered shares have gone missing and have been sold after the 11.08.2017 *status quo* Order. The assertion of Judgment Debtors that almost all the shares have been sold by the banks in furtherance of the Pledge Agreement is disputed by the Decree Holder. It is stated by the Decree Holder that there are no proper disclosures of sale of shares. Instances have been shown by the Decree Holder where a large number of shares have been sold in off-market transactions which could not have been pledged. A table has been shown and handed over by the Decree Holder showing the date of transactions, nature of transactions, number of shares disposed of and the disclosures made/not made under various regulations which is being reproduced as under:

Table A: References to the 11 Transactions mentioned in DH: A1

S. No.	Date of Transaction	Nature of Transaction	Number of Shares Disposed	Disclosure under PIT Regulations	Disclosure under SAST Regulations
1.	03.07.2017	Disposal	11,92,563	**DH: A4, Disclosure reported to**	**Disclosure not available as threshold not**

				exchange on 06.07.2017 @Pg. 87	triggered.
2.	07.07.2017	Disposal	4,00,000	DH: A4, Disclosure reported to exchange on 12.07.2017 @Pg. 87	Disclosure not available as threshold not triggered.
3.	12.07.2017	Disposal	1,93,000	DH: A4, Disclosure reported to exchange on 17.07.2017 @Pg. 85	Disclosure not available as threshold not triggered.
4.	14.07.2017	Disposal	10,00,000	DH: A4, Disclosure reported to exchange on 20.07.2017 @Pg. 85	Disclosure not available as threshold not triggered.
5.	18.07.2017	Disposal	54,00,000	DH: A4, Disclosure reported to exchange on 11.08.2017 @Pg. 83	Disclosure not available even though the threshold was triggered
6.	18.07.2017	Disposal	1,31,50,000	DH: A4, Disclosure reported to exchange on 21.07.2017	DH: A4, Disclosure dated 20.07.2017 @Pg. 126-129

				@Pg. 84	NOTE: The disclosure states that the number of shares transferred is 1,35,09,330.
7.	25.07.2017	Disposal	17,25,000	**DH: A4, Disclosure reported to exchange on 27.07.2017 @Pg. 84**	**Disclosure not available as threshold not triggered.**
8.	26.07.2017	Disposal	18,08,000	**DH: A4, Disclosure reported to exchange on 31.07.2017 @Pg. 83**	**Disclosure not available as threshold not triggered.**
9.	27.07.2017	Disposal	20,00,000	**DH: A4, Disclosure reported to exchange on 31.07.2017 @Pg. 84**	**Disclosure not available as threshold not triggered.**
10.	08.08.2017	Disposal	1,95,000	**DH: A4, Disclosure reported to exchange on 11.08.2017 @Pg. 83**	**Disclosure not available as threshold not triggered.**
11.	10.08.2017	Disposal	54,62,411	**DH: A4, Disclosure**	**DH: A4, Disclosure dated**

				reported to exchange on 14.08.2017 @Pg. 83	14.08.2017 @Pg. 130-133
TOTAL			**3,25,25,774 [representing 99% of the SC identified number of 3,26,24,180 missing unencumbered shares]**		

230. The case of the Decree Holder that these were all sales of unencumbered shares executed after the assurances were given to this Court by the Judgment Debtors finds acceptance at this juncture.

231. Learned Senior Counsels appearing for the FHL and the Judgment Debtors have vehemently opposed the handing-over of charts and notes which are fact centric across the bar without affidavits. However, it is the definite stand of the learned Senior Counsel for the Decree Holder that the Decree Holder stands by every chart and facts stated in the notes and states that the authorized representative of the Decree Holder will take responsibility of all the documents/notes/charts handed-over in Court as his own statement. The Court has, therefore, accepted these documents. It is made clear that if the documents/statements/notes/charts, which have been handed-over in Court, are found to be false, Mr. Vinay Prakash Singh, the authorized representative of the Decree Holder, will have to face the consequences. The entire arguments in this Court have gone on the charts/documents/notes, which have been handed-over in Court. The factual assertions made in those charts/notes have been accepted only on the assurance given by the learned Senior Counsel for the Decree Holder and

the authorized representative of the Decree Holder that he stands by every document/chart/note handed-over in Court.

232. At this juncture, it is necessary to refer to the explanation given by JD No. 1 and 6 regarding sale of these unencumbered shares which according to them was a result of top-up by the banks. Emphasis has been laid on the above Serial Nos. 5 and 6 of the table which comprises bulk of unencumbered shares. According to the Judgment Debtors, the entry at Serial Nos. 5 and 6 mentioned above are instances of disposal of unencumbered shares. According to Judgment Debtor No.1, 54,00,000 shares mentioned at Serial No. 5 were pledged in favour of Lakshmi Vilas Bank and were invoked on 18.07.2017 and 19.07.2017. He further asserts that there are letters from Lakshmi Vilas Bank for the sale of such shares. Similarly, according to Judgment Debtor No.1, the transaction mentioned at Serial No. 6 for 1,31,50,000 shares have been disposed of at the behest of financial institutions of two lenders i.e., Edelweiss and Birla Sun Mutual Fund. According to Judgment Debtor No.1, out of 1,35,09,330 shares, 86,00,000 shares were disposed of by Edelweiss and 49,09,330 shares were disposed of by Birla Sun Mutual Fund.

233. Further, during the course of hearing, JD No. 1 has attempted to demonstrate from contemporaneous disclosures and records that the lion's share of the reduction of Apex Court identified figure of 3.26 Crores is on account of fresh pledge creation on 20.07.2017 by Yes Bank Limited on 2,98,15,406 unencumbered shares. It is the contention of the Judgment Debtors that these transactions by themselves materially undermine the Decree Holder's assertion that the entire reduction pertained to allegedly unencumbered shares disposed of through the alleged 11 transactions.

234. It is stated by the Judgment Debtors that the assertions made by the Decree Holder are wholly misconceived, speculative and based on conjectures rather than verified facts and are contrary to the contemporaneous records.

235. On the contrary, the banks have contradicted the statements by stating that they have respected the Orders of the status quo as the shares involved in perfecting the pledges through their pledge agreements were already encumbered shares and no unencumbered shares have been further encumbered.

236. This Court is of the opinion that rather than this Court entering into a sale by sale analysis and examining its disclosures, an expert would be in a better position to unearth these transactions. They would also be able to identify the complicity by FHL or violation of SEBI Regulations by the companies and Judgment Debtors, and banks which will attract its own penal consequences. Though much time has been spent by both sides, where one side has alleged a brazen violation concerning the sale of unencumbered shares that violated the undertakings given to this Court by JD No. 1 and 6 in connivance with FHL, while FHL is trying to defend those transactions, it will not be proper or possible for this Court to make a detailed analysis of the transactions. Due to conflicting stances of the Decree Holder, the banks, and the Judgement Debtors, this Court is inclined to take assistance of a Forensic Auditor to unearth these disputed assertions.

237. A perusal of the facts reveals that 3,83,15,217 unencumbered shares were reduced to 26,31,777 unencumbered shares from June 2017 to September 2017, following the *Status Quo* Order passed by the Apex Court. Although it is the assertion of the Decree Holder that these shares were not

sold as top ups, an assertion which is also supported by the banks, the same has been vehemently denied by the Judgment Debtors. It is necessary to unearth this dissipation of over three crore shares, which were at that time sufficient to pay off the decree. For this purpose, it is necessary to conduct forensic audits into the accounts of the concerned banks, to ascertain whether shares have been sold by utilising unencumbered shares or not and the accounts of FHL to ascertain the complicity of FHL. It is also necessary to scrutinize the accounts of FHHPL, which held all the shares on behalf of JD No. 1 and 6 regarding compliances of the SEBI regulations. This scrutiny is crucial since the common links among all the Judgment Debtors, FHHPL, and FHL are JD No. 1 and 6, who were controlling the entire web of companies that ultimately held more than 70 percent of the shares of FHL. JD No. 1 and 6 retired in March 2018, by which time the shares of FHHPL in FHL were reduced to 27,31,367, dwindling the 70 percent shareholding to less than 1 percent in the wake of solemn assurances given to this Court.

238. Further, in face of the contrary stance of the Banks and the Judgment Debtors regarding the status of encumbrance over the shareholding of FHHPL in FHL, it is necessary to direct a Forensic Audit to find out the real quantum of shares that were encumbered. Such exercise will assist in determining whether the JD No. 1 and 6 actually ever held 5.26 Crore unencumbered shares, or was that submission only a deceit, to pull wool over the eyes of this Court in order to evade the Decree.

239. The Apex Court in Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., **(2023) 7 SCC 641** has desired the conduct of forensic audit for a factual analysis of the situation. The relevant portion reads as under:

*"**33.** That takes us to the next set of questions regarding the role played by the noticee banks and financial institutions. With the assistance of the learned counsel appearing for the parties we made an attempt to go through the documents placed on record but find ourselves unable to come to a definite conclusion whether there were antecedent arrangements which enabled said banks and financial institutions to keep attaching the shares and keep on converting large quantity of shares from the compartment of "unencumbered shares" to that of "encumbered shares" and thereafter keep disposing of said shares.*

***34.** We are also unable to come to a clear conclusion whether all those actions were protected by the order dated 15-2-2018 [Daiichi Sankyo Co. Ltd. v. Oscar Investments Ltd., 2018 SCC OnLine SC 3571] passed by this Court enabling the banks and financial institutions to sell encumbered shares. This exercise will require going into issues of fact, comparing of the documents and accounts as well as considering the expediency whether the shares were required to be sold in order to keep affording comfort and sufficient security to said banks and financial institutions.*

***35.** It is true that it is possible for a court, while exercising jurisdiction in contempt, to pass consequential orders in the nature of sequestration orders to secure the properties which the contemnor had put beyond the reach of the court or which were acquired by the contemnor for himself or for any other person or entity by his wrongful acts. But there are two difficulties to undertake such exercise in contempt jurisdiction in the present matter. First, these noticees were not parties to the initial proceedings in this Court. Secondly, they have come up with a defence that* *all their acts were purely commercial in nature and it was the expediency of the situation which demanded such actions on their part. These issues need to be gone into at the appropriate stage(s). But before reacting that level, a factual analysis in the form of forensic audit as suggested by Daiichi is also required to be undertaken. Such exercise will certainly help the court in arriving at an appropriate conclusion and in passing appropriate orders or directions. We, therefore, refrain from passing any directions against the said banks and financial institutions for the present but observe that the executing court or any other authority competent to exercise such power shall do well to appoint foreign auditor(s) to undertake proper exercise to unravel the truth.*

***36.** Insofar as the issues concerning the acquisition of proprietary interests in hospitals and diagnostics centres at a price of Rs 4666 crores by FHL is concerned, facts on record are not quite adequate to enter into such arena. Prima facie, it appears to be acquisition of proprietary interest to subserve the business structure of FHL as suggested by IHH/NTK. But again, that is a matter to be enquired into and facts to be assessed in the light of any forensic analysis, if the court so deems appropriate."*

240. It is necessary to bear in mind the distinction between directing a forensic audit and adjudicating civil liability. A direction for forensic audit is purely investigative in nature and is intended to facilitate the discovery and reconstruction of facts which may not otherwise be available on the existing record. Such a direction neither enlarges the scope of the decree nor results in the fastening of liability upon the entity whose affairs are directed to be examined. The opinion of the Auditor is expert evidence in terms of

Section 39 of Bharatiya Sakshya Adhiniyam, 2023, which will enable the executing court to take appropriate steps to undo the wrongs committed, if any, by persons who have aided and abetted and indulged in violating assurances given to Court.

241. The Apex Court in Daiichi Sankyo Company Limited v. Oscar Investments Limited **(2023) 7 SCC 641** while dealing with allegations relating to the dissipation of the assets of the Judgment Debtors, directed a forensic audit into the role of the banks notwithstanding the fact that the banks were neither judgment debtors nor parties to the execution proceedings. The Apex Court consciously deferred the adjudication of their respective rights and liabilities until after the forensic audit was conducted, observing that the factual position is required to be ascertained before any legal consequences could be considered. The same analogy applies to FHL as well. Merely because FHL was not a party to the arbitral proceedings or the execution proceedings cannot preclude this Court from directing a forensic audit where the material on record discloses a prima facie nexus between FHL in its erstwhile Avatar and the downstream companies, including FHHPL, which held 70% of the shares in FHL. As in the case of the banks, the present direction is intended only to facilitate a comprehensive factual enquiry, leaving all questions concerning liability and the legal consequences arising therefrom to be decided at a subsequent stage after the audit report is received.

242. In the opinion of this Court, it is precisely to avoid dishonesty of this nature that the doctrine of piercing the corporate veil was introduced for the first time by the Englishmen. A mere corporate facade cannot be the basis to defeat legitimate rights or commit a fraudulent activity or wrong. The Courts

must always step in and pierce the corporate veil to identify the actual wrongdoers and hold them accountable.

243. Judgment Debtors No. 1 and 6, through other Judgment Debtors, have 100 percent shareholdings of FHHPL, which in turn had a 70 percent shareholding of FHL. Since, Judgment Debtors No. 1 and 6, were in control and ownership of FHL at the time when assurances were given to this Court, the company cannot simply raise its hand and state that the individuals, who were responsible for controlling the company, did not inform the company, and therefore the Company did not have knowledge of the assurances. This stance of the Company is rather hard to swallow since the underlying reason for recording the assurances itself, was purportedly to preserve the market value of FHL. This Court did not attach the shares, or pass any orders because of the value of the shares of FHL would have been adversely affected. It is to be borne in mind that the underlying assets of JD No. 1 and 6 were actually the shares of FHL held by the Judgment Debtors themselves and through FHHPL as all other companies did not have any value of their own. Till now this Court has not been informed about the businesses of any of the Judgment Debtor’s downstream companies. The very same argument now raised by FHL that ordering a forensic audit will adversely affect FHL cannot be accepted. FHL cannot create an artificial distinction between its old Avatar and new Avatar. Only the management has changed, but the company remains the same. This Court takes judicial notice of the fact that at the time when the new management took over FHL they would be aware of the high profile litigation and its likely adverse impact on the value of FHL at a later point of time. In any case it is settled that the change of management of the company does not affect its rights and liabilities, and

liabilities incurred by the old management are inherited by the new management.

244. The purport of the forensic audit will also aid the Court in understanding businesses of the downstream companies, and whether FHL should be permitted to take the argument of ignorance regarding assurances tendered by its top management. The fact that the company is now under a new management is no answer that the earlier management did all the mischief and that FHL under the new management cannot be held accountable for the wrongdoings of FHL when it was under the old management. When the new management took over, it would have necessarily done its homework before taking over the company and all its liabilities, if any.

245. It is the case of the financial institutions that they have dealt only with those shares which were already encumbered in their favour under the respective loan and pledge agreements. According to them, any sale or invocation undertaken by them was confined to the security created in their favour in accordance with the contractual arrangements between the parties, and no independent dealing with unencumbered shares has taken place.

246. On the other hand, the case put forth by the Judgment Debtors is that, owing to the decline in the market value of the pledged shares, additional shares came to be provided to the lenders under the contractual top-up mechanism forming part of the financing documents. According to the Judgment Debtors, the transfer or pledge of such additional shares was a consequence of the operation of the pre-existing contractual obligations and not an independent transaction dehors the loan agreements.

247. The Decree Holder disputes the aforesaid stand and contends that the top-up mechanism resulted in the depletion of the unencumbered asset base, contrary to the assurances recorded before this Court and the subsequent orders passed by the Apex Court. In view of these rival stands, this Court is of the opinion that the issue cannot be determined merely on the basis of the pleadings and documents presently relied upon by the parties. A forensic audit would assist the Court in tracing the movement of the shares, examining the operation of the pledge and top-up arrangements, and ascertaining whether only the encumbered shares were dealt with or whether unencumbered shares also came to be transferred or encumbered during the relevant period. Such an exercise would facilitate a proper adjudication of the controversy arising in the present proceedings.

248. Even if the Court accepts the argument that FHL was in fact a third party to the present execution proceedings, even such third party is bound by the orders of the Court in case such third party assisted in aiding and abetting the Judgement Debtors in flouting Court Orders.

249. The Apex Court in Sita Ram v. Balbir, **2017 (2) SCC 456,** has held as under:-

> *"**32.** From the record and the Enquiry Report as stated above, it is clear that soon after the order dated 24-10-2013 [Sita Ram v. Balbir, (2014) 13 SCC 489 : (2014) 5 SCC (Cri) 722] passed by this Court, the respondent remained admitted in the hospital for a total of 527 days. Nothing has been placed on record, nor any medical condition or reasons have been adverted to why such admission was required in the first place. As found in the enquiry, no laboratory test was conducted during the period of admission from 25-2-2014 to 12-4-2014 and from 12-4-2014 to 1-5-2015. This shows*

that the illness as projected was not serious at all and no intensive treatment as indoor patient was required or called for. This prolonged admission without any justifiable medical reason was essentially to defeat the direction issued by this Court in its order dated 24-10-2013 [Sita Ram v. Balbir, (2014) 13 SCC 489 : (2014) 5 SCC (Cri) 722] and repeated non-bailable warrants issued by the trial court.

33. *The order passed by the trial court on 20-11-2013 shows that an affidavit of son of the respondent was filed along with a copy of review petition. The application seeking exemption was rejected by the trial court and SHO concerned was issued notice why the warrant of arrest was not executed. Subsequent orders dated 5-2-2014, 15-3-2014, 16-4-2014 and 15-4-2014 indicate that fresh warrants of arrest were issued through Superintendent of Police. Neither the respondent surrendered to custody as directed by this Court nor the police concerned took any steps to arrest him or try to find his whereabouts. No report was made to the trial court. What is evident is total inaction on the part of the police which helped the respondent in evading the arrest and defeating the orders passed by this Court as well as by the trial court. This callous attitude and conduct of the police calls for strict administrative actions and corrective penal measures.*

34. *The conduct exhibited by the respondent in getting himself admitted in the hospital when there was no medical reason to justify such admission and in continuing to remain admitted till action was taken by this Court in contempt jurisdiction, exhibits scant respect and regard for the orders and processes issued by the court. Despite issuance of notice, the respondent has neither filed any response nor tendered any apology. Having gone through the record and considered the enquiry report, we have no doubt that* *the respondent is guilty of having committed contempt of the direction issued by this Court in its order dated 24-10-2013 [Sita Ram v. Balbir, (2014) 13 SCC 489 : (2014) 5 SCC (Cri) 722] and also in obstructing the administration of justice.*

35. *We now turn to the role of the hospital and medical professionals. The explanation offered by Dr Munish Prabhakar and Dr K.S. Sachdev was that they were not aware of any direction by this Court to the respondent to surrender to custody or that the respondent was required in connection with any crime. At the outset, it must be stated that the respondent stood admitted in the hospital for 527 days. Not a single laboratory test was conducted during the period from 15-2-2014 to 1-5-2015. The papers produced on record do not in any way suggest any medical emergency which could justify continued admission of the respondent as an indoor patient. Further, during the third admission of the respondent from 12-4-2014 the first payment to the hospital was made only on 10-1-2015 i.e. nearly after 247 days. It is inconceivable that in normal circumstances a man, who has no ailment or a medical condition requiring emergency treatment would be kept as indoor patient without any laboratory test and without recovering a single paisa for more than 247 days. Moreover, the record indicates that on as many as 47 occasions during his admission the respondent was allowed to move out of the hospital without even an endorsement by any medical professional justifying such movement. The Enquiry Report further shows that there used to be regular stream of visitors during the stay of the respondent in the hospital. These features clearly show that the respondent was in perfect condition of health and never really required admission in the hospital as an indoor patient. The role of the hospital was certainly not as innocent as is sought to be projected and the features detailed above* *clearly show that the hospital was party to the attempts on the part of the respondent to defeat the order passed by this Court.*

36. *When the compliance report forwarded by the District Judge, Rohtak on 15-1-2015 indicated admission of the respondent in a hospital, this Court by order dated 19-1-2015 called for a report from the Superintendent of Police, Rohtak. The enquiry initiated thereafter resulted in recording of the statement of son of the respondent on 8-2-2015 who also produced medical certificate dated 7-2-2015. This certificate issued by Privat Hospital shows that the respondent was likely to be discharged in next 5 to 7 days. Significantly, the said certificate was not even referred to in any of the subsequent affidavits filed by Dr Munish Prabhakar or Dr K.S. Sachdev. If the respondent was likely to be discharged in few days as certified on 7-2-2015 what went wrong in not discharging him or was there any medical emergency justifying his continued admission? Nothing is spelt out in any of the affidavits. As a matter of fact, the subsequent certificate dated 26-3-2015 did not even speak of likelihood of discharge and used the expression "… he is fit to be produced in the court of law as per present health condition". The assertions made by Shashank Anand in his affidavit dated 2-7-2015 are that notwithstanding issuance of such certificate dated 26-3-2015, the hospital refused to discharge the respondent and orally advised the police not to arrest the respondent lest it may put his life in jeopardy or danger. The Enquiry Report rightly observed "… the said hospital on more than one occasion informed Rohtak Police in writing that accused Balbir Singh was fit to be taken to court but did not discharge him". It was only after this Court passed the order dated 24-4-2015 directing personal presence of Dr Munish Prabhakar with a direction to* *file an affidavit and explain the situation, that the hospital discharged the respondent on 1-5-2015 which then resulted in arrest and production of the respondent.*

37. *The explanation offered by Dr Munish Prabhakar and Dr Sachdev that the respondent trapped the hospital and by non-payment of the bills kept prolonging his stay in the hospital does not inspire confidence at all. If the hospital was really a victim of the machinations of the respondent, at the first opportunity i.e. when requisition was made by the police on 13-2-2015, the hospital would have responded immediately. The requisition dated 13-2-2015 had informed the hospital that the respondent was a proclaimed offender and that his custody was required. This requisition was close on the heels of the medical certificate dated 7-2-2015 and if that certificate was a correct one, the time was ripe for discharge of the respondent. However, as stated by Shashank Anand in his affidavit dated 2-7-2015, the hospital refused to discharge the respondent. The theory that the hospital was trapped by the designs of the respondent is a mere eyewash and we reject the same. Thus, the inescapable conclusion is that the hospital extended protection and asylum to the respondent to defeat the order passed by this Court as well as those passed by the trial court and thereby obstructed administration of justice.*

38. *Dr Munish Prabhakar has been Medical Director of the hospital and as submitted by the learned Senior Counsel on his behalf, he receives salary and some percentage of consultation charges recovered from the patients. Dr K.S. Sachdev, on the other hand, has been the Managing Director of the Company which owns and runs the said hospital. We have found that the continued admission for such a long period as indoor* *patient was not justifiable for any reason or medical condition of the respondent. Both these medical professionals are responsible for such prolonged admission which was actuated by only one reason which was to extend medical asylum to the respondent as a cover to defeat the orders passed by this Court and the trial court. In this process, these medical professionals not only helped the respondent in violating the order of this Court but they also obstructed administration of justice.*

39. *The aforementioned conclusions then raise issues regarding the extent of liability of the contemnors. Sections 2(b) and 2(c) of the Contempt of Courts Act, 1971 which define "civil contempt" and "criminal contempt" are as under:*

*"**2. (b)** "**civil contempt**" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;*

(c) *"**criminal contempt**" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—*

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

40. *Wilful disobedience to a direction issued by this Court on 24-10-2013 [Sita Ram v. Balbir, (2014) 13 SCC 489 : (2014) 5 SCC (Cri) 722] on the part of the respondent is quite evident. He was party to the proceedings and bound by the order and as such his liability on that court stands established. Further, by* *his defiance of the direction so issued, he also obstructed administration of justice. He is thus liable for committing civil contempt as well as criminal contempt. But the medical professionals, namely, Dr Munish Prabhakar and Dr K.S. Sachdev were not parties to the matter where the direction in question was passed.*

41.* *As regards the liability of the aforesaid medical professionals, questions that arise are : (1) whether a person, who is not bound by a direction issued by the court could be held guilty for committing contempt of court for his conduct in either directly aiding and abetting violation on the part of the person who is bound by such direction; and (2) what is the extent of liability of such person.

42. *In Seaward v. Paterson [Seaward v. Paterson, (1895-99) All ER Rep 1127 : (1897) 1 Ch 545 (CA)] the landlord of the premises concerned had obtained an injunction against Paterson i.e. his tenant restraining him from doing or allowing to be done anything on the premises which would be a nuisance to the landlord and from using the premises otherwise than for the purposes of a private club. Alleging that the tenant had committed contempt of the court by allowing the premises to be used for boxing matches, the landlord applied for committal of two other persons, namely, Sheppard and Murray on the ground that they had aided and assisted the tenant in his disobedience to the injunction. The following passages from the judgment of Lindley, L.J. are quite instructive : (All ER pp. 1130 F-G & 1131 B-D)*

Now, Let us consider what jurisdiction the court has to make an order against Murray. There is no injunction against him—he is no more bound by the injunction granted against Paterson than any other member of the public. He is bound, like other members of the public, *not to interfere with, and not to obstruct, the course of justice; and the case, if any, made against him must be this, not that he has technically infringed the injunction, which was not granted against him in any sense of the word, but that he has been aiding and abetting others in setting the court at defiance, and deliberately treating the order of the court as unworthy of notice. If he has so conducted himself, it is perfectly idle to say that there is no jurisdiction to commit him for contempt as distinguished from a breach of the injunction, which has a technical meaning.*

*****

A motion to commit a man for breach of an injunction, which is technically wrong unless he is bound by the injunction, is one thing; and a motion to commit a man for contempt of court, not because he is bound by the injunction by being party to the cause, but because he is conducting himself so as to obstruct the course of justice, is another and a totally different thing. ***The difference is very marked. In the one case the party who is bound by the injunction is proceeded against for the purpose of enforcing the order of the court for the benefit of the person who got it. In the other case, the court will not allow its process to be set at naught and treated with contempt.***

43. *In Z Ltd. v. A-Z and AA-LL [Z Ltd. v. A-Z and AA-LL, (1982) 1 All ER 556 : 1982 QB 558 : (1982) 2 WLR 288 (CA)] the plaintiff had obtained injunction against certain defendants and the assets of one such defendant against whom the injunction was granted, were held by a bank. The bank was served with a copy of the injunction but the defendant concerned had not yet been served. While considering the question whether any disposal of assets belonging to the defendant by the bank would make it liable for committing contempt of court, it was stated as under : (All ER pp. 566g-j & 567a-b)*

"I think that the following propositions may be stated as to the consequences which ensue when there are acts or omissions which are contrary to the terms of injunction : (1) The person against whom the order is made will be liable for contempt of court if he acts in breach of the order after having notice of it. (2) A third party will also be liable if he knowingly assists in the breach, that is to say if knowing the terms of the injunction he wilfully assists the person to whom it was directed to disobey it. This will be so whether or not the person enjoined has had notice of the injunction.
*****
I will give my reasons for the second proposition and take first the question of prior notice to the defendant.
It was argued that the liability of the third person arose because he was treated as aiding and abetting the defendant (i.e. was an accessory) and as the defendant could himself not be in breach unless he had notice it followed that there was no offence to which the third party could be an accessory. In my opinion this argument misunderstands the true nature of the liability of the third party. He is liable for contempt of court committed by himself. It is true that his conduct may very often be seen as possessing a dual character of contempt of court by himself and aiding and abetting the contempt by another, but the conduct will always amount to contempt by himself. It will be conduct which knowingly interferes with the administration of justice by causing the order of the court to be thwarted."

44. *The extent of liability of third party in such actions was considered by the House of Lords in Attorney General v. Times Newspapers Ltd. [Attorney General v. Times Newspapers Ltd., (1991) 2 All ER 398 : (1992) 1 AC 191 : (1991) 2 WLR 994 (HL)] In that case the Attorney General had brought action against two newspapers seeking permanent injunction* *restraining them from publishing material from a book written by a person who was formerly a member of the security service and by terms of his employment was bound by confidentiality which would stand breached if his memoirs were published. While the interlocutory injunctions restraining publication of the material pending trial of such action were granted against those two newspapers, three other newspapers published extensive extracts and summaries of the book following which proceedings for criminal contempt against them were brought by the Attorney General. At the trial of those proceedings those three other newspapers were held to be guilty of criminal contempt. Lord Brandon of Oakbrook concluded as under : (All ER pp. 405j & 406a-c)*

"… The claims of the Attorney General in the confidentiality actions were for permanent injunctions restraining the defendants from publishing what may conveniently be called Spycatcher material. The purpose of the Millett injunctions was to prevent the publication of any such material pending the trial of the confidentiality actions. The consequence of the publication of Spycatcher material by the publishers and editor of The Sunday Times before the trial of the confidentiality actions was to nullify, in part at least, the purpose of such trial, because it put into the public domain, part of the material which it was claimed by the Attorney General in the confidentiality actions ought to remain confidential. It follows that the conduct of the publishers and editor of The Sunday Times constituted the actus reus of impeding or interfering with the administration of justice by the court in the confidentiality actions."

45. *In a separate concurring opinion Lord Jauncey of Tullichettle stated as under : (Attorney General case [Attorney General v. Times Newspapers Ltd., (1991) 2 All ER 398 : (1992) 1 AC 191 : (1991) 2 WLR*

994 (HL)] , All ER p. 426j)
"I turn to consider whether there is any reason why established principle should not be applied to the situation in this case. I do not accept the proposition that to apply established principles in the foregoing circumstances would effectively be to convert every injunction from an order in personam to an order contra mundum. That proposition ignores the distinction between the breach of an order by the person named therein and interference with the course of justice resulting from a frustration of the order by the third party."

46. In our view, the medical professionals, namely, Dr Munish Prabhakar and Dr K.S. Sachdev extended medical asylum to the respondent without there being any reason or medical condition justifying prolonged admission of the respondent as an indoor patient as a cover to defeat the orders passed by this Court and the trial court, as stated above and thereby aided and assisted the respondent in violating the order of this Court. By such conduct these medical professionals have obstructed administration of justice.

***47.** We thus hold that the respondent is guilty of having violated the order dated 24-10-2013 [Sita Ram v. Balbir, (2014) 13 SCC 489 : (2014) 5 SCC (Cri) 722] passed by this Court and for having obstructed administration of justice. We also hold Dr Munish Prabhakar and Dr K.S. Sachdev guilty for having helped the respondent in his attempts and thereby obstructing administration of justice. Having held so, we could straightaway have imposed appropriate punishment under the Act. However, we deem it appropriate to grant one more opportunity to these contemnors. The respondent has not filed any affidavit nor tendered an apology. At the same time for Dr K.S. Sachdev, Managing Director of the company* *that owns the hospital is said to be 76 years of age. Considering the fact that these are medical professionals with sufficient standing, in our view ends of justice would be met if one more opportunity is granted to them to present their view on the issue of punishment. In the circumstances, we direct presence of these three contemnors on 2-1-2017. The respondent is in custody and therefore appropriate production warrant shall be issued under the signature of the Registrar of this Court ensuring presence of the respondent before this Court. The police concerned is directed to facilitate such production of the respondent. The contemnors can also present their views and make appropriate submission in writing on or before 23-12-2016.*

***48.** Coming to the role of the police officials in the present matter, we have already observed that the conduct exhibited by the police officials concerned in not ensuring compliance with the orders passed by the trial court calls for strict administrative action. The actions in that behalf have already been initiated and for the present we rest content by observing that the disciplinary proceedings shall be taken to a logical end and the guilty shall be brought to book. We request the Director General of Police of Haryana and the Home Secretary to look into the matter and ensure that the departmental proceedings are taken to a logical end at the earliest. The status report/action-taken report in that behalf shall be filed in this Court within three months from the date of this judgment."*

(emphasis supplied)

250. The Apex Court in <u>Israr Ahmad Khan v. Amarnath Prasad</u>, **2026 SCC OnLine SC 322** has observed as under:

"21. Before resting the pen, we are duty-bound to indicate as to how third-parties/non-parties to the original proceedings can also be proceeded against for contempt. This question has cropped up before this Court in the past. We need only cite the leading judgment on the point.

***22.** Without verbiage, we straightaway refer to the dicta enunciated by a learned 3-Judge Bench in Sita Ram v. Balbir @ Bali, (2017) 2 SCC 456 : (2017) 2 SCC (Cri) 88:*

> *'**40.** Wilful disobedience to a direction issued by this Court on 24-10-2013 [Sita Ram v. Balbir, (2014) 13 SCC 489 : (2014) 5 SCC (Cri) 722] on the part of the respondent is quite evident. He was party to the proceedings and bound by the order and as such his liability on that court stands established. Further, by his defiance of the direction so issued, he also obstructed administration of justice. He is thus liable for committing civil contempt as well as criminal contempt. <u>But the medical professionals, namely, Dr Munish Prabhakar and Dr K.S. Sachdev were not parties to the matter where the direction in question was passed.</u>*
>
> ***41.** <u>As regards the liability of the aforesaid medical professionals, questions that arise are : (1) whether a person, who is not bound by a direction issued by the court could be held guilty for committing contempt of court for his conduct in either directly aiding and abetting violation on the part of the person who is bound by such direction; and (2) what is the extent of liability of such person.</u>*

__42.__ In Seaward v. Paterson [Seaward v. Paterson, [1895-99] All ER Rep 1127 : [1897] 1 Ch. 545 (CA)] <u>the landlord of the premises concerned had obtained an injunction against Paterson i.e. his tenant restraining him from doing or allowing to be done anything on the premises which would be a nuisance to the landlord and from using the premises otherwise than for the purposes of a private club. Alleging that the tenant had committed contempt of the court by allowing the premises to be used for boxing matches, the landlord applied for committal of two other persons, namely, Sheppard and Murray on the ground that they had aided and assisted the tenant in his disobedience to the injunction.</u> The following passages from the judgment of Lindley, L.J. are quite instructive: (All ER pp. 1130 F-G & 1131 B-D)

Now, Let us consider what jurisdiction the court has to make an order against Murray. <u>There is no injunction against him—he is no more bound by the injunction granted against Paterson than any other member of the public. He is bound, like other members of the public, not to interfere with, and not to obstruct, the course of justice; and the case, if any, made against him must be this, not that he has technically infringed the injunction, which was not granted against him in any sense of the word, but that he has been aiding and abetting others in setting the court at defiance, and deliberately treating the order of the court as unworthy of notice. If he has so conducted himself, it is perfectly idle to say that there is no jurisdiction to commit him for contempt as</u>

distinguished from a breach of the injunction, which has a technical meaning.

***

A motion to commit a man for breach of an injunction, which is technically wrong unless he is bound by the injunction, is one thing; and a motion to commit a man for contempt of court, not because he is bound by the injunction by being party to the cause, but because he is conducting himself so as to obstruct the course of justice, is another and a totally different thing. The difference is very marked. In the one case the party who is bound by the injunction is proceeded against for the purpose of enforcing the order of the court for the benefit of the person who got it. In the other case, the court will not allow its process to be set at naught and treated with contempt.

43. *In Z Ltd. v. A-Z and AA-LL [Z Ltd. v. A-Z and AA-LL, [1982] 1 All ER 556 : [1982] Q.B. 558 : [1982] 2 WLR 288 (CA)] the plaintiff had obtained injunction against certain defendants and the assets of one such defendant against whom the injunction was granted, were held by a bank. The bank was served with a copy of the injunction but the defendant concerned had not yet been served. While considering the question whether any disposal of assets belonging to the defendant by the bank would make it liable for committing contempt of court, it was stated as under : (All ER pp. 566g-j & 567a-b)*

"I think that the following propositions may be stated as to the consequences which ensue when there are acts or omissions which are contrary to

the terms of injunction : (1) The person against whom the order is made will be liable for contempt of court if he acts in breach of the order after having notice of it. (2) A third party will also be liable if he knowingly assists in the breach, that is to say if knowing the terms of the injunction he wilfully assists the person to whom it was directed to disobey it. This will be so whether or not the person enjoined has had notice of the injunction.

***

I will give my reasons for the second proposition and take first the question of prior notice to the defendant. It was argued that the liability of the third person arose because he was treated as aiding and abetting the defendant (i.e. was an accessory) and as the defendant could himself not be in breach unless he had notice it followed that there was no offence to which the third party could be an accessory. In my opinion this argument misunderstands the true nature of the liability of the third party. He is liable for contempt of court committed by himself. It is true that his conduct may very often be seen as possessing a dual character of contempt of court by himself and aiding and abetting the contempt by another, but the conduct will always amount to contempt by himself. It will be conduct which knowingly interferes with the administration of justice by causing the order of the court to be thwarted."

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191 : [1991] 2 WLR 994 (HL)] In that case the Attorney General had brought action against two newspapers seeking permanent injunction restraining them from publishing material from a book written by a person who was formerly a member of the security service and by terms of his employment was bound by confidentiality which would stand breached if his memoirs were published. <u>While the interlocutory injunctions restraining publication of the material pending trial of such action were granted against those two newspapers, three other newspapers published extensive extracts and summaries of the book following which proceedings for criminal contempt against them were brought by the Attorney General. At the trial of those proceedings those three other newspapers were held to be guilty of criminal contempt. Lord Brandon of Oakbrook concluded</u> as under : (All ER pp. 405j & 406a-c)

"... The claims of the Attorney General in the confidentiality actions were for permanent injunctions restraining the defendants from publishing what may conveniently be called Spycatcher material. The purpose of the Millett injunctions was to prevent the publication of any such material pending the trial of the confidentiality actions. <u>The consequence of the publication of Spycatcher material by the publishers and editor of The Sunday Times before the trial of the confidentiality actions was to nullify, in part at least, the purpose of such trial, because it put into the public domain, part of the material which it was claimed by the Attorney General in the confidentiality actions ought to remain confidential. It follows that the conduct of the publishers and editor of The Sunday Times constituted the actus reus of impeding or</u>

interfering with the administration of justice by the court in the confidentiality actions.”

45. *In a separate concurring opinion Lord Jauncey of Tullichettle stated as under: (Attorney General case [Attorney General v. Times Newspapers Ltd., [1991] 2 All ER 398 : [1992] 1 A.C. 191 : [1991] 2 WLR 994 (HL)], All ER p. 426j)*

“I turn to consider whether there is any reason why established principle should not be applied to the situation in this case. I do not accept the proposition that to apply established principles in the foregoing circumstances would effectively be to convert every injunction from an order in personam to an order contra mundum. That proposition ignores the distinction between the breach of an order by the person named therein and interference with the course of justice resulting from a frustration of the order by the third party.”

47. *We thus hold that the respondent is guilty of having violated the order dated 24-10-2013 [Sita Ram v. Balbir, (2014) 13 SCC 489 : (2014) 5 SCC (Cri) 722] passed by this Court and for having obstructed administration of justice. We also hold Dr Munish Prabhakar and Dr K.S. Sachdev guilty for having helped the respondent in his attempts and thereby obstructing administration of justice. Having held so, we could straightaway have imposed appropriate punishment under the Act. However, we deem it appropriate to grant one more opportunity to these contemnors. The respondent has not filed any affidavit nor tendered an* *apology. At the same time for Dr K.S. Sachdev, Managing Director of the company that owns the hospital is said to be 76 years of age. Considering the fact that these are medical professionals with sufficient standing, in our view ends of justice would be met if one more opportunity is granted to them to present their view on the issue of punishment. In the circumstances, we direct presence of these three contemnors on 2-1-2017. The respondent is in custody and therefore appropriate production warrant shall be issued under the signature of the Registrar of this Court ensuring presence of the respondent before this Court. The police concerned is directed to facilitate such production of the respondent. The contemnors can also present their views and make appropriate submission in writing on or before 23-12-2016.'*

(emphasis in original)

23. Simply put, thus, it is no longer res integra that a party, once becomes or is made aware of an Order of this Court, if yet acts in wilful default or deliberate non-compliance or any such like conduct against/in breach of the Order concerned, makes itself liable to face the full wrath of Contempt Jurisdiction. *In the cases at hand, the Government and the Additional Chief Secretary have been aware of the Order dated 20.05.2025, at the very least from 22.07.2025 and onwards, as clear from the correspondence placed on record in the Affidavit adverted to hereinbefore. Nothing more requires to be stated on the factual matrix. In any event, we are bound by Sita Ram (supra), which squarely applies herein."*

(emphasis supplied)

251. As stated earlier, the Court cannot throw up its hands in despair and state that even if its Orders have been flouted, it cannot remedy the wrong

other than by punishing the wrongdoers with imprisonment. If such a situation were to take place, the Courts would lose their standing, and the common man would not believe in the efficacy of the justice system. The present case concerns the execution of a foreign award, and India cannot be made to look like a country where Courts of law can be taken for a ride by clever judgment debtors relying upon complex corporate structures and feigning ignorance, especially when they were fully aware of making calculated decisions to defeat the interests of the Decree Holder.

252. Either way, though these cases are of contempt and not in execution, the complicity of FHL would be a relevant factor for this Court to decide to proceed for contempt against FHL. Though The Apex Court in Pallav Sheth v. Custodian & Ors., **(2001) 7 SCC 549** has held that contempt cannot be initiated beyond the period of one year yet the said Judgment states that the said period of one year can begin after the contempt is unearthed. Section 17 of the Limitation Act states that the period of limitation of fraud and deceit begins only after the fraud is found. The Company, its office bearers including the Compliance Officer, and any other person, can be proceeded against in Contempt when this Court finally discovers such fraud or deceit.

253. If the Court finds that any third party aided or facilitated the violation of its Orders, the mere passage of time since the commission of such contempt would not denude the Court of its jurisdiction. The Court retains the authority to initiate and impose appropriate punishment for contempt notwithstanding that the contumacious conduct occurred some time ago. The Apex Court in Pallav Sheth (*supra*)**,** has held as under:-

> *"**45.** It was submitted on behalf of the appellant that even if the provisions of Section 20 do not bar the High*

Court from taking action if proceedings are initiated by the filing of an application within a period of one year of the contempt having been committed, in the present case the period of limitation must be regarded as having expired long before the filing of the application by the Custodian and, therefore, no action on such an application could be taken by the Court.

46. The record discloses that the Custodian received information of the appellant having committed contempt by taking over benami concerns, transferring funds to these concerns and operating their accounts clandestinely only from a letter dated 5-5-1998 from the Income Tax Authorities. It is soon thereafter that on 18-6-1998, a petition was filed for initiating action in contempt and notice issued by the Special Court on 9-4-1999. Section 29(2) of the Limitation Act, 1963 provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply insofar as, and to the extent to which, they are not expressly excluded by such special or local law. This Court in the case of Kartick Chandra Das [(1996) 5 SCC 342] has held that by virtue of Section 29(2) read with Section 3 of the Limitation Act, limitation stands prescribed as a special law under Section 19 of the Contempt of Courts Act, 1971 and in consequence thereof the provisions of Sections 4 to 24 of the Limitation Act stand attracted.

47. Section 17 of the Limitation Act, inter alia, *provides that where, in the case of any suit or application for which a period of limitation is prescribed by the Act, the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of the defendant or his agent [Section 17(1)(b)] or where any document necessary to establish the right of the plaintiff or the applicant has been fraudulently concealed from him [Section 17(1)(d)], the period of limitation shall not begin to run until the plaintiff or the applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production. These provisions embody fundamental principles of justice and equity viz. that a party should not be penalised for failing to adopt legal proceedings when the facts or material necessary for him to do so have been wilfully concealed from him and also that a party who has acted fraudulently should not gain the benefit of limitation running in his favour by virtue of such fraud.*

48. The provisions of Section 17 of the Limitation Act are applicable in the present case. The fraud perpetuated by the appellant was unearthed only on the Custodian receiving information from the Income Tax Department, vide their letter of 5-5-1998. On becoming aware of the fraud, application for initiating contempt proceedings was filed on 18-6-1998, well within the period of limitation prescribed by Section 20. It is on this application that the Special Court by its order of 9-4-1999 directed the application to be treated as a show-cause notice to the appellant to punish him for contempt. In view of the abovestated facts and in the light of the discussion regarding the correct interpretation of Section 20 of

the Contempt of Courts Act, it follows that the action taken by the Special Court to punish the appellant for contempt was valid. The Special Court has only faulted in being unduly lenient in awarding the sentence. We do not think it is necessary, under the circumstances, to examine the finding of the Special Court that this was a continuing wrong or contempt and, therefore, action for contempt was not barred by Section 20."

(emphasis supplied)

254. The transactions relating to the sale of the controlling stake in FHL to IHH Healthcare Berhad also assumes relevance in the present proceedings. During the pendency of the proceedings before the Apex Court, an Order dated 14.12.2018 came to be passed directing that *status quo* with regard to the sale of the controlling stake in FHL to Malaysian IHH Healthcare Berhad be maintained. The order was passed with a view of preserving the existing position while the issues arising in the matter were under consideration.

255. Thereafter, the Apex Court noticed that it had been stated before it that the transaction had already been completed. The Court observed that it was necessary to ascertain when the sale had taken place and the stage at which the controlling stake in FHL had been transferred to IHH Healthcare Berhad. The Apex Court also took note of the application filed by FHL stating that the transaction had been completed on 13.11.2018 and seeking modification of the order dated 14.12.2018 insofar as it related to the sale of the controlling stake.

256. The Apex Court further took note of the submissions that FHL proposed to transfer approximately Rs. 4,000 crores, stated to have been received pursuant to the transaction, to RHT Health Trust, Singapore. It was

also noticed that the acquisition of assets from RHT had been completed while the matter was pending before the Apex Court. In view of these developments, the Apex Court considered it appropriate to direct that the issue relating to the alleged violation of the Order dated 14.12.2018 be examined in separate contempt proceedings and issued notice accordingly.

257. The aforesaid sequence of events indicates that the implementation of the IHH-NTK transaction, the transfer of the sale consideration and the movement of the underlying assets formed the subject matter of consideration before the Apex Court. In the opinion of this Court, these aspects require a detailed examination of the relevant transactions and records. A forensic audit would assist this Court in tracing the movement of the shares and funds, examining the chronology of the transactions, and addressing the rival contentions of the parties on the basis of a comprehensive factual record. The observation of the Apex Court in Daiichi Sankyo Co. Ltd. vs. Oscar Investments Limited **(2023) 7 SCC 641,** on this aspect reads as under:-

> ***"36. Insofar as the issue concerning the acquisition of proprietary interests in hospitals and diagnostics centres at a price of Rs.4666 crores by FHL is concerned, facts on record are not quite adequate to enter into such arena. Prima facie, it appears to be acquisition of proprietary interest to subserve the business structure of FHL as suggested by IHH/NTK. But again, that is a matter to be enquired into and facts to be assessed in the light of any forensic analysis, if the court so deems appropriate.***
>
> ***xxx***

37.3 The executing court may also consider issuing appropriate process and appointing foreign auditor(s) to analyse the transactions entered into between FHL and RHT and other related transactions."

(emphasis supplied)

In view of these observations, this Court deems it appropriate to include this aspect as well in the scope of the forensic audit.

258. The doctrine of reverse corporate veil piercing is founded on the principle that the separate juristic personality of a company cannot be permitted to become an instrument for defeating the administration of justice or frustrating the enforcement of judicial orders. While the doctrine of separate corporate personality remains the general rule, Courts have, in appropriate cases, looked beyond the corporate structure where it is found that the company has been employed as a facade or conduit for shielding assets or placing them beyond the reach of creditors. The object of the doctrine is not to disregard the independent existence of the company in every case, but to ensure that the corporate form is not misused to defeat legitimate rights or obstruct the due process of law.

259. The principle of reverse corporate veil piercing assumes significance in execution proceedings where the issue is not merely whether an individual has utilised a company for personal benefit, but whether the company itself has become the repository or vehicle of assets which, in substance, continue to be under the control of those against whom the decree is sought to be enforced. In such circumstances, the doctrine enables the Court, upon a proper factual foundation being established, to examine whether the assets held by the company ought to be treated as available for

satisfaction of the decree, notwithstanding the separate corporate personality of the entity.

260. The application of the doctrine, however, is necessarily fact-specific and constitutes an exception to the general principle of corporate separateness. Before such a course can be adopted, the Court must be satisfied, on the basis of cogent material, that the corporate structure has been employed to defeat the rights of the Decree Holder or to evade compliance with judicial orders. It is for this reason that a detailed forensic examination assumes importance in the present case. The audit would assist the Court in tracing the movement of assets, identifying the entities and individuals responsible for the impugned transactions, and determining whether the factual circumstances justify an examination of the applicability of the doctrine of reverse corporate veil piercing.

261. The outcome of such an exercise would also have a bearing on the legal consequences that may ultimately follow. If it is found that the corporate structure was employed as a device to progressively dissipate the assets which had been represented before the Courts as available for satisfaction of the Award, or to obscure the movement of those assets through interconnected entities, this Court may be required to examine whether the facts justify lifting or piercing the corporate veil. In an appropriate case, where the facts disclose that the company itself was utilised as an instrumentality through which individuals orchestrated such transactions, the principles underlying reverse corporate veil piercing may also require consideration, so as to determine whether the company can be held answerable for the consequences of those acts.

262. The necessity of a forensic audit arises from the larger pattern of transactions brought to the notice of this Court. The case of the Decree Holder is not confined to any single transaction but pertains to the gradual depletion of the shareholding and other assets which had repeatedly been represented before this Court as remaining available towards satisfaction of the Award. The record discloses that over a period of time, the shareholding held through various entities underwent substantial changes by reason of invocation of pledges, creation of additional security, operation of the contractual top-up mechanism, sale of pledged shares, the IHH-NTK transaction, on market and off market transactions by the Judgment Debtors. Whether these transactions constitute independent commercial dealings undertaken in accordance with pre-existing contractual arrangements, as contended by the concerned parties, or whether they collectively resulted in the dissipation of the asset base available for enforcement, is an issue which cannot be determined on the basis of the pleadings alone.

263. A forensic audit would, therefore, serve the limited but essential purpose of reconstructing the chronology of the relevant transactions and tracing the movement of the shares and the corresponding funds. Such an exercise would enable the Court to identify the nature of the transactions undertaken, the sequence in which they occurred, the approvals obtained therefor, and the entities and individuals involved in the decision-making process. The audit would also assist in examining whether the diminution of the shareholding was the result of the legitimate enforcement of pre-existing security interests or whether unencumbered assets progressively came to be alienated, as alleged by the Decree Holder.

264. Equally, the audit would assist the Court in determining the role, if any, played by the directors, officers and key managerial personnel of the companies concerned in the implementation of these transactions. The question whether any particular transaction was approved, facilitated or carried into effect with knowledge of the undertakings recorded before this Court and the orders passed from time to time is necessarily a factual enquiry. Such determination would require examination of board resolutions, committee approvals, correspondence, banking records, demat statements, pledge documentation and other contemporaneous corporate records, which cannot effectively be undertaken without a forensic examination. In cases involving allegations of fraud, concealment or diversion of assets, the factual foundation must precede the legal conclusion.

265. The purpose of the forensic audit is to provide the Court with an objective reconstruction of the continuous movement of shares and funds, identify the persons and entities involved at each stage of the transactions, and furnish the factual basis upon which the Court may determine, if necessary, the liability of the directors and officers concerned.

266. The jurisdiction of the executing Court cannot be rendered ineffective merely because the transactions in question have been undertaken through a series of corporate entities or under the guise of commercial arrangements. Where it is alleged that the asset base, which was repeatedly represented before the Court as being available for satisfaction of the decree, has undergone continuous diminution through successive transactions, the Court is under a duty to satisfy itself that its orders and the undertakings recorded before it have not been rendered otiose.

267. Equally, where the material placed before the Court discloses a prima facie case that the movement of assets has occurred over a period of time through multiple entities, involving successive encumbrances, invocation of pledges, transfers of shares and movement of funds, the Court would be failing in its duty if it were to decline a proper factual examination of such transactions. The process of execution is intended to secure to the Decree Holder the fruits of the decree, and the Court must ensure that the enforcement process is not frustrated by the complexity of the corporate structure or the multiplicity of transactions. It is for this reason that the Court is required to adopt such measures as are necessary to ascertain the true nature and effect of the transactions brought to its notice.

268. This Court also cannot lose sight of the larger institutional implications of permitting such transactions to pass without scrutiny. An order directing maintenance of status quo is intended to preserve the subject matter of the litigation and bind every person having notice thereof. If, despite such orders, lenders were permitted to obtain fresh securities, insist upon top-up pledges, or enhance their security interests by accepting additional encumbrances over protected assets, the efficacy of judicial orders would stand seriously undermined. Acceptance of such a proposition would create a dangerous precedent whereby parties, acting through private contractual arrangements, could effectively neutralise or dilute the operation of judicial injunctions. The sanctity of orders passed by Constitutional Courts cannot be made subordinate to contractual mechanisms devised between private parties. Consequently, if the forensic audit reveals that fresh encumbrances or top-up transactions were effected after the status quo orders of the Apex Court, the legality of such transactions would necessarily

require close judicial scrutiny and cannot be presumed to be insulated merely because they arose under pre-existing contractual arrangements.

269. Should the forensic audit reveal that any bank or financial institution, despite being aware of the subsisting judicial orders, knowingly participated in, facilitated or acted in furtherance of transactions having the effect of violating or circumventing those orders, this Court would not be powerless to examine the legal consequences flowing therefrom. The Court, in exercise of its jurisdiction to protect the sanctity of judicial proceedings and to ensure the effective enforcement of its decree, would be competent to determine the liability, if any, of such institutions in accordance with law, and to pass such consequential directions as may be warranted, including directions intended to neutralise the effect of transactions undertaken in breach of binding judicial orders. The purpose of the forensic audit is, therefore, not merely evidentiary; it is to furnish this Court with a complete and independent factual foundation. This shall form the basis upon which appropriate judicial relief, against all persons found to have participated in frustrating the execution of the decree, will be determined.

270. Another aspect which is to be seen in the forensic audit would be the amounts taken on loan by the downstream entities of the Judgment Debtors after the first assurance or even after the Award was passed and the purpose of loan taken by these downstream entities. There is nothing on record to show the nature of business conducted by these entities and therefore it is necessary to understand why these loans were taken and if there is no reason at all for these loans to be taken and these loans were taken for personal necessities of the persons in the control of these downstream entities of the Judgment Debtors, i.e., JD No.1, JD No.6 and their family members, then

these transactions would be to defeat the decree. This Court has observed that for the loans taken by the downstream entities of the Judgment Debtors, shares of FHL held by FHHPL were kept as security. This Court needs to ascertain whether these loans were part of a legitimate transaction for the genuine business or were they part of the fraud to dissipate the shareholding of FHHPL in FHL to defeat the decree.

271. It is relevant to mention that the application of the Decree Holder is for an audit in respect of all 17 Banks involved in the transaction. During the course of oral arguments, they restricted this prayer to only 3 Banks. After the hearing, a written note was circulated on behalf of the Decree Holder, stating that they do not wish for any forensic audit of any Bank, and are only keen on an audit of FHL and the Judgement Debtors. This Court, however, keeping in mind the observations of the Apex Court in Vinay Prakash Singh vs. Sameer Gehlaut **(2021) 16 SCC 319** and Daiichi Sankyo Co. Ltd. vs. Oscar Investments Limited **(2023) 7 SCC 641**, and the arguments advanced herein, finds it fit for a forensic audit to be ordered in respect of all banks and financial institutions involved in defeating the value of assurances to this Court. Needless to say, the Decree Holder's personal *volte face*, is immaterial to this consideration. This Court would have had the power to order for forensic audit, with or without the application, and their change or softening in stance towards these banks and financial institutions, does not take away from the fact that, these organisations may have knowingly assisted in the flouting of the orders of this Court, as well as the Apex Court.

272. In the opinion of this Court, directing a forensic audit in the present case would be consistent with the aforesaid objective. Hence, all the three

applications being EX.APPL.(OS) 3764/2022, EX.APPL.(OS) 1615/2025, EX.APPL.(OS) 3763/2022 are allowed.

273. In view of the above, S Ramanand Aiyar & Co., Chartered Accountants, 708 Surya Kiran Building, 19 Kasturba Gandhi Marg, New Delhi, Delhi - 110001, is appointed as the Forensic Auditor to conduct the forensic audit. The purpose of the forensic audit is to identify and re-construct the entire chain of events so as to enable the court to identify the persons and the companies involved in the dissipation of shares.

274. The Forensic Auditor appointed by this Court would, therefore, be required to:

i. Examine and reconstruct the complete evolution of the shareholding of FHHPL in FHL after 24.05.2016 (date of first assurance), including the reduction in its shareholding over time, the movement of encumbered and unencumbered shares, creation of fresh pledges, invocation of existing pledges, operation of contractual top-up mechanisms, transfer of shares pursuant thereto, release of securities, sale of pledged shares, and all consequential transactions affecting the shareholding pattern.

ii. Prepare a comprehensive transaction-wise chronology of all dealings in FHL shares by FHHPL and other Judgment Debtors from the date of the first undertaking furnished before this Court till the present, specifying, inter alia, the date of each transaction, the number of shares involved, the nature of the transaction, the transferor and transferee, the approving authority, the consideration (if any), the underlying documents, and the judicial orders subsisting on the relevant date.

iii. Examine whether any pledge, fresh encumbrance, top-up, invocation, release, transfer or sale of FHL shares held by FHHPL and other Judgment

Debtors was undertaken after the orders were passed by this Court and the Apex Court, including but not limited to the Orders dated 11.08.2017, 31.08.2017, 15.02.2018, 23.02.2018 and 14.12.2018, and identify all such transactions together with the relevant records.

iv. Examine the role of FHL, its officers, directors, key managerial personnel, Company Secretary, Compliance Officer, Registrar and Transfer Agent, depositories and any other intermediary involved in processing, approving, recording or giving effect to the aforesaid transactions, including the statutory filings, corporate approvals and regulatory compliances pertaining thereto.

v. Examine the role of banks, and identify the loan facilities secured by FHL shares, the creation and variation of security, maintenance of security margins, operation of contractual top-up obligations, invocation and sale of pledged shares, release of security, and the outstanding liability corresponding to each transaction.

vi. Prepare a comparative bank-wise statement setting out, inter alia, the date of each facility, value of the facility, shares pledged, fresh securities created, top-up transfers, invocation, sale, release of securities, outstanding exposure and the judicial orders subsisting on the date of each transaction.

vii. Examine the complete trail of the consideration received from the transfer or sale of FHL shares and trace the destination and utilisation of such funds.

viii. Examine the complete transaction relating to the acquisition of the controlling stake in FHL by IHH Healthcare Berhad through Northern TK Venture Pte. Ltd., including the approvals obtained, regulatory filings made, the flow of consideration, the role of the concerned parties and intermediaries, and all consequential transactions affecting the shareholding of FHHPL in FHL.

ix. Identify every company, partnership, trust or other entity, directly or indirectly owned, controlled or beneficially held by the Judgment Debtors, which received the benefit of loans secured by FHL shares, and examine the purpose for which such borrowings were availed and utilised after the decree.

x. Examine the books of account, bank statements, demat statements, board and committee minutes, shareholder's resolutions, statutory registers, internal correspondence, emails, legal opinions, compliance memoranda, depository instructions, Registrar and Transfer Agent records, SEBI and stock exchange filings, and such other records as may be necessary to determine the knowledge of the concerned persons regarding the undertakings furnished before this Court and the orders passed by this Court and the Apex Court at the time of each transaction.

xi. Identify all persons who proposed, negotiated, approved, authorised, implemented, facilitated, certified or recorded each of the aforesaid transactions, together with the nature and extent of their respective involvement.

xiii. Preserve, wherever necessary, electronic records, metadata, depository instructions and digital communications relied upon during the audit, and annex to the report the relevant transaction matrices, chronological charts, fund-flow statements and shareholding evolution charts forming the basis of the Auditor's conclusions.

275. The concerned downstream entities owned by JD No. 1 & JD No. 6, the banks from which the loans were taken by any of the Judgment Debtors,

and FHL, shall assist the Forensic Auditor in arriving at the complete picture of the dissipation of shares by providing requisite requisitions.

276. The Forensic Auditor will issue a list of requisitions within four weeks from the date of this Order to all the concerned entities. The concerned entities will furnish the details, information, documents to the Forensic Auditor within two weeks from the date of receipt of the requisition list. Needless to state that if, at a later point of time, the Forensic Auditor requires any additional requisitions from the concerned entities, the Forensic Auditor will raise a requisition and the concerned entities will be obliged to furnish such information within two weeks of receipt of such requisition.

277. The Institute of Chartered Accountants of India (ICAI) has brought out the scale of fees for professional assignments done by the Chartered Accountants. The fees for *Audit and Other Assignments* has been given as follows:-

Particulars	***Rates for Class A Cities***
(i) Principal	*Rs.18,000/- & above per day*
(ii) Qualified Assistants	*Rs. 10,000/- & above per day*
(iii) Semi Qualified Assistants	*Rs.5,000/- & above per day*
(iv) Other Assistants	*Rs.3,000/- & above per day*

278. The aforementioned chart is of the year 2020. Keeping in mind the rate of inflation, the fees of the Auditor is fixed in the following manner:-

(i) Principal	Rs.25,000/- per day
(ii) Qualified Assistants	Rs. 15,000/- per day
(iii) Semi Qualified Assistants	Rs.7,500/- per day
(iv) Other Assistants	Rs.5,000/- per day

279. The Auditor is requested to complete the exercise within a period of six months from the date of the receipt of this Order.

280. The fees of the Auditor for the period of six months shall be borne by the Decree Holder.

281. Failure to make or fulfil the requisition raised by the Forensic Auditor will be viewed as contempt of the Orders of this Court and appropriate action shall be taken against the defaulters in accordance with law.

282. In case the Auditor requires any information from the statutory authorities, depositories or any other bodies carrying out public function, then such bodies are expected to supply the Auditor with any and all information that the Auditor will require relating to the present case.

283. All the applications being EX.APPL.(OS) 3764/2022, EX.APPL.(OS) 1615/2025, EX.APPL.(OS) 3763/2022 are disposed of and the same are allowed.

O.M.P.(EFA)(COMM.) 6/2016 & EX.APPL.(OS) 31/2020, EX.APPL.(OS) 1164/2020, EX.APPL.(OS) 1365/2021, EX.APPL.(OS) 3650/2022, EX.APPL.(OS) 3850/2022, EX.APPL.(OS) 244/2024, EX.APPL.(OS) 839/2025, EX.APPL.(OS) 1036/2025, EX.APPL.(OS) 1211/2025, EX.APPL.(OS) 1212/2025, EX.APPL.(OS) 1545/2025, EX.APPL.(OS) 1873/2025, EX.APPL.(OS) 1877/2025, EX.APPL.(OS)

54/2026, EX.APPL.(OS) 55/2026, EX.APPL.(OS) 56/2026, I.A. 5552/2019, I.A. 5553/2019

List on 01.04.2027.

SUBRAMONIUM PRASAD, J

AUGUST 31, 2026
hsk/mt