

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

WRIT PETITION NO. 50695 OF 2018 (GM-DRT)

C/W

WRIT PETITION NO. 43105 OF 2017 (GM-DRT)

IN WP NO. 50695/2018

BETWEEN:

1. DIAGEO HOLDINGS NETHERLANDS B.V.
MOLENWERF 12, 1014 BG AMSTERDAM
THE NETHERLANDS
REPRESENTED THROUGH ITS
AUTHORISED SIGNATORY
MR.ABHIROOP MUKHERJEE
AGED 38 YEARS
R/AT R 614, PURVA PARK APARTMENT
53, MSO COLONY, COX TOWN
BANGALORE-560 005

...PETITIONER

Digitally
signed by
VASANTHA
KUMARY B
K

Location:
HIGH
COURT OF
KARNATAKA

(BY DR. ADITYA SONDHI, SENIOR ADVOCATE FOR
MS. POORNIMA HATTI, ADVOCATE)

AND:

1. STATE BANK OF INDIA
HAVING ITS CORPORATE CENTRE AT
STATE BANK BHAVAN
MADAME CAMA ROAD
NARIMAN POINT, MUMBAI-400 021
REPRESENTED BY ITS



MANAGING DIRECTOR
AND HAVING ITS
INDUSTRIAL FINANCE BRANCH
AT 61, RESIDENCY PLAZA
RESIDENCY ROAD
BENGALURU-560 025

2. AXIS BANK LIMITED
HAVING ITS REGISTERED OFFICE AT
TRISHUL, THIRD FLOOR
OPPOSITE SAMARTHESWAR TEMPLE
LAW GARDEN, ELLISBRIDGE
AHMEDABAD-380 006
REPRESENTED BY ITS
MANAGING DIRECTOR AND
HAVING ITS CORPORATE OFFICE
AT AXIS HOUSE, C-2
WADIA INTERNATIONAL CENTRE
PANDURANG BUDHKAR MARG
WORLI, MUMBAI-400 025
(DELETED AS PER ORDER DATED 13.6.2016)
3. BANK OF BARODA
HAVING ITS HEAD OFFICE AT
BARODA HOUSE, P.B.NO.506
MANDAVI, VADODARA-396 006
REPRESENTED BY ITS
MANAGING DIRECTOR
ACTING THROUGH ITS
BRANCH OFFICE AT P.O.BOX 11745
SAMATA BUILDING
GENERAL BHOSALE MARG
NARIMAN POINT, MUMBAI-400 021
4. BANK OF INDIA
HAVING ITS HEAD OFFICE AT
STAR HOUSE, C-5, G BLOCK
BANDRA KURLA COMPLEX
BANDRA (E), MUMBAI-400 051
AND HAVING ITS
LARGE CORPORATE BRANCH
AT GROUND FLOOR
ORIENTAL BUILDING
364, D.N. ROAD, FORT

MUMBAI-400 001
(DELETED AS PER ORDER DATED 13.6.2016)

5. CENTRAL BANK OF INDIA
HAVING ITS CORPORATE OFFICE AT
CHANDRAMUKHI, NARIMAN POINT
MUMBAI-560 021 AND HAVING ITS
CORPORATE FINANCE BRANCH
(EARLIER KNOWN AS
INDUSTRIAL FINANCE BRANCH)
AT CHANDRAMUKHI, GROUND FLOOR
NARIMAN POINT, MUMBAI-560 021
(DELETED AS PER ORDER DATED 13.6.2016)
6. CORPORATION BANK
HAVING ITS CORPORATE OFFICE AT
MANGALADEVI TEMPLE ROAD
PANDESHWAR, MANGALORE-575 001
REPRESENTED BY ITS MANAGING DIRECTOR
AND HAVING ITS
INDUSTRIAL FINANCE BRANCH AT
RALLARAM MEMORIAL BLDG
1ST FLOOR, CSI COMPOUND
MISSION ROAD, BENGALURU-560 027
7. THE FEDERAL BANK LIMITED
HAVING ITS REGISTERED OFFICE AT
FEDERAL TOWERS, ALUVA-683 101, KERALA
REPRESENTED BY ITS MANAGING DIRECTOR
AND HAVING ITS BRANCH OFFICE AT
9, HALCYON COMPLEX
ST. MARKS ROAD, BANGALORE-560 001
8. IDBI BANK LIMITED
HAVING ITS HEAD OFFICE AT
IDBI TOWER, WTC COMPLEX
CUFFE PARADE, MUMBAI-400 005
REPRESENTED BY ITS MANAGING DIRECTOR
AND ITS BRANCH OFFICE AT
CORPORATE BANKING GROUP-FAMG
9TH FLOOR, IDBI TOWER, WTC COMPLEX
CUFFE PARADE, COLABA, MUMBAI-400 005

9. INDIAN OVERSEAS BANK
HAVING ITS CENTRAL OFFICE AT
763, ANNA SALAI, CHENNAI-600 002
REPRESENTED BY ITS MANAGING DIRECTOR
AND ITS BRANCH OFFICE AT
"HARIKRIPA", 26-A, S.V. ROAD
SANTACRUZ (W), MUMBAI-400 054
10. JAMMU & KASHMIR BANK LIMITED
HAVING ITS REGISTERED OFFICE
AT CORPORATE HEADQUARTERS
MAULANA AZAD ROAD, SRINAGAR
KASHMIR-190 001
REPRESENTED BY ITS MANAGING DIRECTOR
AND ITS BRANCH OFFICE AT
SYED HOUSE, 124, S V SAVARKAR MARG
MAHIM (WEST), MUMBAI-400 016
11. PUNJAB & SIND BANK
HAVING ITS HEAD OFFICE AT 21
RAJENDRA PLACE, NEW DELHI-110 008
REPRESENTED BY ITS MANAGING DIRECTOR
AND HAVING AMONGST OTHERS
A BRANCH OFFICE AT J.K. SOMANI BUILDING
BRITISH HOTEL LANE, FORT
MUMBAI-400 023
12. PUNJAB NATIONAL BANK
HAVING ITS HEAD OFFICE AT 7
BHIKAJI CAMA PLACE, NEW DELHI-110 607
REPRESENTED BY ITS MANAGING DIRECTOR
ACTING THROUGH ITS CORPORATE BRANCH
AT CENTENARY BUILDING, 28
M G ROAD, BENGALURU-560 001
13. STATE BANK OF MYSORE
HAVING ITS HEAD OFFICE AT
KEMPE GOWDA ROAD
BENGALURU-560 009
REPRESENTED BY ITS MANAGING DIRECTOR
AND ITS CORPORATE ACCOUNTS BRANCH
AT NO.18, RAMANASHREE ARCADE
M G ROAD, BANGALORE-560 001

14. UCO BANK
HAVING ITS HEAD OFFICE AT 10
BTM SARANI, KOLKATA-700 001
WEST BENGAL, INDIA
REPRESENTED BY ITS MANAGING DIRECTOR
AND ITS BRANCH OFFICE AT 1ST FLOOR
13/22, K G ROAD, BENGALURU-560 009
15. UNITED BANK OF INDIA
HAVING ITS HEAD OFFICE AT 11
HEMANTA BASU SARANI
KOLKATA-700 001
REPRESENTED BY ITS MANAGING DIRECTOR
ACTING THROUGH ITS BRANCH OFFICE
AT 40, K G ROAD, BENGALURU-560 009
16. JM FINANCIAL ASSET RECONSTRUCTION
COMPANY PVT. LTD.
HAVING ITS REGISTERED OFFICE AT
7TH FLOOR, CNERGY
APPASAHEB MARATHE MARG
PRABHADEVI, MUMBAI-400 025
REPRESENTED BY MANAGING DIRECTOR
17. KINGFISHER AIRLINES LTD
HAVING ITS REGISTERED OFFICE AT
UB TOWER, LEVEL 12
UB CITY, 24, VITTAL MALLYA ROAD
BANGALORE-560 001
REPRESENTED BY MANAGING DIRECTOR
18. UNITED BREWERIES (HOLDINGS) LTD
(IN LIQUIDATION)
REPRESENTED BY THE OFFICIAL LIQUIDATOR
NO.12, RAHEJA TOWERS, M G ROAD
BANGALORE-560 001
REPRESENTED BY MANAGING DIRECTOR
19. DR. VIJAY MALLYA, MAJOR
HAVING HIS CURRENT PLACE OF
RESIDENCE AT "LADYWALK",
QUEEN HOO LANE, TEWIN, WELWYN
AL6 0LT, UNITED KINGDOM
REPRESENTED BY MANAGING DIRECTOR

20. KINGFISHER FINVEST (INDIA) LTD
UB TOWER, LEVEL 12, UB CITY
24, VITTAL MALLYA ROAD
BANGALORE-560 001
REPRESENTED BY MANAGING DIRECTOR
21. SBICAP TRUSTEE COMPANY LTD
NO.8, 5TH FLOOR, KHETAN BHAVAN
198, JAMSHEDJI TATA ROAD
CHURCHGATE, MUMBAI-400 020
REPRESENTED BY ITS MANAGING DIRECTOR
22. THE COMMISSIONER OF SALES TAX-I
CENTRAL EXCISE BUILDING
M.K. ROAD, CHURCHGATE
MUMBAI- 400 020
23. STANDARD CHARTERED BANK
HAVING ITS REGISTERED OFFICE AT
1 BASINGHALL AVENUE
LONDON EC2V 5DD, UNITED KINGDOM
REPRESENTED BY ITS MANAGING DIRECTOR
24. UNIT TRUST OF INDIA INVESTMENT
ADVISORY SERVICES LTD.,
HAVING ITS REGISTERED OFFICE
AT UTI TOWER, GN BLOCK
BANDRA KURLA COMPLEX
BANDRA EAST, MUMBAI-400 051
REPRESENTED BY ITS MANAGING DIRECTOR
AND ITS ADMINISTRATIVE OFFICE AT
UNIT NO.2, BLOCK B, 1ST FLOOR
JVPD SCHEME, GULMOHAR CROSS ROAD
NO.9, ANDHERI WEST, MUMBAI-400 049
...RESPONDENTS

(BY SRI VIKRAM A HUILGOL, SENIOR ADVOCATE FOR
SRI VEERENDRA PATIL, ADVOCATE FOR R1, R3, R6-R12 &
R14-R16;
SRI GANAPATHI HEGDE, ADVOCATE FOR R4, R5 & R13;
MS. KRUTIKA RAGAHAVAN, ADVOCATE FOR R17 & R18;
VIDE ORDER DATED 18.06.2019, NOTICE TO R19 & R20

IS HELD SUFFICIENT;
R2 & R21 ARE SERVED AND UNREPRESENTED;
R22 IS SERVED AND UNREPRESENTED;
SRI PERIKAL K. ARJUN, ADVOCATE FOR R23 & R24)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER PASSED BY THE DEBTS RECOVERY APPELLATE TRIBUNAL AT CHENNAI DATED 09.10.2018 IN RA NO.150/2017 AT ANNEXURE-B AND ETC.

IN WP NO. 43105/2017

BETWEEN:

1. DIAGEO HOLDINGS NETHERLANDS B V
MOLENWERF 12, 1014 BG AMSTERDAM
THE NETHERLANDS, REPRESENTED BY ITS
POWER OF ATTORNEY HOLDER
MR. NISCHAL HINDIA
...PETITIONER

(BY DR. ADITYA SONDHI, SENIOR ADVOCATE FOR
MS. POORNIMA HATTI, ADVOCATE)

AND:

1. STATE BANK OF INDIA
HAVING ITS CORPORATE CENTRE AT
STATE BANK BHAVAN
MADAME CAMA ROAD
NARIMAN POINT, MUMBAI-400 021
REPRESENTED BY ITS
MANAGING DIRECTOR AND HAVING ITS
INDUSTRIAL FINANCE BRANCH AT 61
RESIDENCY PLAZA, RESIDENCY ROAD
BENGALURU-580 025
2. AXIS BANK LIMITED
HAVING ITS REGISTERED OFFICE AT
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OPPOSITE SAMARTHESWAR TEMPLE
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REPRESENTED BY ITS
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PANDURANG BUDHKAR MARG
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REPRESENTED BY ITS
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HAVING ITS HEAD OFFICE AT
STAR HOUSE, C-5, G BLOCK
BANDRA KURLA COMPLEX
BANDRA (E), MUMBAI-400 051
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REPRESENTED BY ITS MANAGING DIRECTOR
AND HAVING ITS
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REPRESENTED BY ITS MANAGING DIRECTOR
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CUFFE PARADE, MUMBAI-400 005
REPRESENTED BY ITS MANAGING DIRECTOR
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9TH FLOOR, IDBI TOWER, WTC COMPLEX
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REPRESENTED BY ITS MANAGING DIRECTOR
AND ITS CORPORATE ACCOUNTS BRANCH
AT NO.18, RAMANASHREE ARCADE
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REPRESENTED BY ITS MANAGING DIRECTOR
AND ITS BRANCH OFFICE AT 1ST FLOOR
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HAVING ITS HEAD OFFICE AT 11
HEMANTA BASU SARANI
KOLKATA-700 001

REPRESENTED BY ITS
MANAGING DIRECTOR
ACTING THROUGH ITS BRANCH OFFICE
AT 40, K G ROAD
BENGALURU-560 009

16. JM FINANCIAL ASSET RECONSTRUCTION
COMPANY PVT. LTD.
HAVING ITS REGISTERED OFFICE AT
7TH FLOOR, CNERGY
APPASAHEB MARATHE MARG
PRABHADEVI, MUMBAI-400 025
17. SBICAP TRUSTEE COMPANY LTD.
NO.8, 5TH FLOOR, KHETAN BHAVAN
198, JAMSHEDJI TATA ROAD
CHURCHGATE
MUMBAI-400 020
18. STANDARD CHARTERED BANK
HAVING ITS REGISTERED OFFICE AT
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UNITED KINGDOM
REPRESENTED BY ITS
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ADVISORY SERVICES LTD
HAVING ITS REGISTERED OFFICE AT
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BANDRA KURLA COMPLEX
BANDRA EAST, MUMBAI-400 051
REPRESENTED BY ITS MANAGING DIRECTOR
AND ITS ADMINISTRATIVE OFFICE AT
UNIT NO.2, BLOCK B, 1ST FLOOR
JVPD SCHEME, GULMOHAR CROSS ROAD
NO.9, ANDHERI WEST
MUMBAI-400 049
20. NATIONAL SECURITIES DEPOSITORIES LIMITED
4TH FLOOR, 'A' WING, TRADE WORLD
KAMALA MILLS COMPOUND
SENAPATI BAPAT MARG

LOWER PAREL
MUMBAI-400 013

21. STANDARD CHARTERED SECURITIES
(INDIA) LIMITED
SECOND FLOOR
23-25, M.G.ROAD, FORT
MUMBAI-400 001

22. THE RECOVERY OFFICER-I
DEBT RECOVERY TRIBUNAL-2
KARNATAKA
DEPARTMENT OF FINANCIAL SERVICES
MINISTRY OF FINANCE
GOVERNMENT OF INDIA
BENGALURU-560 025

...RESPONDENTS

(BY SRI VIKRAM A HUILGOL, SENIOR ADVOCATE FOR
SRI VEERENDRA PATIL, ADVOCATE FOR R-1;
SRI GANAPATHI BHAT, ADVOCATE FOR R-2 TO R-16;
SRI KUMAR M N, CGSPC FOR R-22;
R-17 SERVED AND UNREPRESENTED;
VIDE ORDER DATED 29.10.2021, NOTICE TO R-18 TO
R-21 IS DISPENSED WITH)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
SET ASIDE THE IMPUGNED ORDER DATED 03.06.2017
PASSED BY THE RECOVERY OFFICER-I AND ALL
PROCEEDINGS PURSUANT THERETO WHICH WAS BROUGHT
TO THE NOTICE OF THE PETITIONER ON 14.09.2017 AT
ANNEXURE-A AND ETC.

THESE PETITIONS HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 30.07.2026, COMING ON FOR
PRONOUNCEMENT THIS DAY, **HON'BLE MR. JUSTICE**
D K SINGH PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

CAV ORDER

(PER: HON'BLE MR. JUSTICE D K SINGH)

The downfall of Vijay Mallya's empire due to a flamboyant lifestyle and excessive personal indulgence is one of the history's most enduring corporate tales. When the focus shifts from operational excellence and financial prudence to personal vanity, outsized egos and hedonistic excess, even decades of assiduous work evaporate rapidly. When the disciplined grit that originally built a multi-decade legacy is replaced by a cult personality and unbridled hubris, the bankruptcy and ruin frequently follow. Perhaps the ultimate modern embodiment of this phenomenon is Dr. Vijay Mallya, who inherited and aggressively expanded a massive liquor empire built over decades. Dubbed "the King of Good Times", his flamboyant lifestyle became inseparable from his brand. His debt-fuelled gamble on Kingfisher Airlines led to a spectacular collapse under more than a billion dollars in debt and his eventual status as a fugitive economic offender. Real-world examples like

Vijay Mallya who built "a self-made powerful empire only to lose it to reckless gambling and lavish spending" demonstrate that building an empire takes decades of relentless discipline, but destroying it requires only a few years of unbridled indulgence.

I PREFACE:

1. W.P.No.50695/2018 has been filed by the petitioner-DIAGEO Holdings Netherlands B.V. challenging the order dated 09.10.2018 passed in R.A.No.150/2017 by the Debts Recovery Appellate Tribunal, Chennai (DRAT) as also the order dated 19.01.2017 passed in O.A.No.766/2013 by the Debts Recovery Tribunal, Bengaluru (DRT) whereas, W.P.No.43105/2017 has been filed by the petitioner challenging the order dated 03.06.2017 passed by the Recovery Officer-I, Debts Recovery Tribunal-II, Bengaluru.

II BRIEF FACTS:

2. The relevant facts for the purposes of decision in these writ petitions are as under:-

Dr. Vijay Mallya had approached the Consortium of Banks for providing working capital and term loan facilities (including

short term loans) to Kingfisher Airlines Limited, a Public Limited Company incorporated under the Companies Act, 1956 and had entered into loan agreements with the Consortium of Banks. However, Kingfisher Airlines committed default in repayment of such loans and advances. Dr. Vijay Mallya requested the Consortium of Banks *inter alia* to restructure and recast the loan facilities.

3. Pursuant to such a request, several meetings took place between the Consortium of Banks and Dr. Vijay Mallya. In April 2010, final decision was made by the Consortium of Banks to restructure and recast the aforesaid loans and credit facilities extended to Kingfisher Airlines. The State Bank of India was designated as Lenders' agent.

4. The parties entered into a Master Debt Recast Agreement (MDRA) dated 21.12.2010 along with various other supplementary agreements for the purposes of securing the existing securities and also creating future securities for the credit facilities/loans advanced by the Consortium of Banks to Kingfisher Airlines.

5. Under the terms of the MDRA, all the term loans existing then were merged and treated as a single Rupee Term Loan Facility and the various working capital facilities as a single Working Capital Facility and these facilities were governed by the terms and conditions of the MDRA and other documents. These Facilities were secured by the securities created under the security documents. The MDRA and allied documents superseded all previous proposals, agreements etc. United Breweries (Holdings) Limited (UBL) and Dr. Vijay Mallya agreed to stand as guarantors for repayment of the outstanding loans of Kingfisher Airlines to the Consortium of Banks. On such promise, separate Agreement of Guarantee was also executed in favour of the Consortium of Banks. Subsequently, on 24.12.2010, the MDRA was amended through an Amendatory Agreement. Under the MDRA dated 21.12.2010, the loan amount to Kingfisher Airlines stood at INR 6,203 crores.

6. Pursuant to the execution of the MDRA, as amended, a Security Trustee Agreement dated 21.12.2010 was entered into between the Consortium of Banks, Kingfisher Airlines and SBICAP Trustee Company Limited by which, SBICAP Trustee Company Limited was appointed as the security trustee for the

benefit of the Consortium of Banks and *inter alia* to hold the security documents and securities created by Kingfisher Airlines in favour of SBICAP Trustee Company Limited. An Inter Creditor Agreement dated 21.12.2010 was entered into between the Consortium of Banks and SBICAP Trustee Company Limited along with the confirmation letter to the said agreement, and a Trust and Retention Accounts Agreement dated 21.12.2010 was also executed. Various other agreements were also executed as mentioned in the impugned orders passed by the DRT and DRAT.

7. Another important document which has a bearing on the controversy in the present case is the Pledge Agreement dated 21.12.2010 executed between Kingfisher Airlines, UBL and Kingfisher Finvest (India) Limited, whereby certain shares owned by UBL were pledged in favour of SBICAP Trustee Company Limited for the benefit of the Consortium of Banks for securing their respective outstandings from Kingfisher Airlines.

8. Jammu and Kashmir Bank Limited had its own exclusive securities in its favour. It was also covered under the Guarantee Agreements and was a party to the MDRA. After execution of the MDRA, Kingfisher Airlines sought for additional

loans from the Consortium of Banks for revival of its business, which was also sanctioned by the Consortium of Banks.

9. As the Kingfisher Airlines had failed to repay the loan sanctioned under the MDRA as well as the additional loans, the bank account of Kingfisher Airlines was declared as Non-Performing Asset (NPA) on various dates between 02.11.2011 and 31.03.2013.

10. The State Bank of India, subsequent to the classification of the loan account of Kingfisher Airlines, in its capacity as Lenders' Agent, had issued the notice dated 02.01.2012 followed by further such notices for repayment of the outstanding loan amounts. Several meetings took place between the Consortium of Banks and Dr. Vijay Mallya from December 2012 to February 2013.

11. We are concerned with the personal shares of Dr. Vijay Mallya and the shares jointly owned by Dr. Vijay Mallya and his son Mr. Sidhartha Mallya of UBL. Dr. Vijay Mallya owned 1,04,86,666 UBL shares and 1,04,64,288 UBL shares jointly with his son Mr. Sidhartha Mallya.

(A) LOAN LIABILITIES OF WATSON LTD:

12. Watson Ltd. (hereinafter referred to as 'Watson' for the sake of brevity), an Overseas Company of Dr. Vijay Mallya, had availed various loans during the year 2006-2007 from ICICI Bank UK. PLC. (hereinafter referred to as 'ICICI Loan'). The loans availed by Watson were secured by the security created under the Share Pledge Agreements. Three Share Pledge Agreements dated 11.07.2006, 28.09.2007 and 26.10.2007 were executed with respect to 100% shares held by Continental Administration Services Ltd., (CAS) in Watson. The CAS as pledgor, ICICI Bank UK. PLC. as Pledgee and Watson as a Company were the parties to these Agreements. In respect of the loan advanced by ICICI Bank UK. PLC., a Share Pledge Agreement dated 31.03.2008 was executed between Watson and ICICI Bank UK. PLC. with respect to shares held by Watson in Orange India Holdings.

13. On 31.03.2009, a Non-Disposal and Safety Net Arrangement Agreement was executed by Dr. Vijay Mallya and Mr. Sidhartha Mallya with respect to, inter alia, 1,04,86,666 shares owned by Dr. Vijay Mallya in UBL and in respect of

another 1,04,64,288 shares jointly owned by Dr. Vijay Mallya and Mr. Sidhartha Mallya in respect of ICICI Loan to Watson.

14. As Watson defaulted in repayment of the ICICI Loan, Dr. Vijay Mallya and Mr. Sidhartha Mallya executed a Share Pledge Deed dated 12.04.2013, wherein they agreed to pledge the UBL shares as mentioned above in favour of ICICI UK. PLC. In terms of the Share Pledge Deed, a pledge was created over 1,04,86,666 shares of UBL solely owned by Dr. Vijay Mallya in favour of IDBI Trusteeship Services Limited for ICICI UK. PLC. However, no pledge was created over the shares of UBL jointly owned by Dr. Vijay Mallya and Mr. Sidhartha Mallya. These shares jointly owned remained subject to the Non-Disposal and Safety Net Arrangement Agreement. Dr. Vijay Mallya, on 02.05.2013, made a public filing with the stock exchange in respect of part of the UBL shares solely held by him and which were pledged with ICICI Bank UK. PLC. after default by Watson.

(B) PROCEEDINGS BEFORE DRT AND DRAT BY CONSORTIUM OF BANKS:

15. The Consortium of Banks initiated proceedings before the DRT in Original Application No.766/2013 for recovery of loan

against Kingfisher Airlines under the MDRA dated 21.12.2010.

Dr. Vijay Mallya was also made a party to these proceedings.

16. In the proceedings before the DRT in O.A.No.766/2013, it appears that the counsel for Dr. Vijay Mallya had made a statement on behalf of Dr. Vijay Mallya giving an oral undertaking that Dr. Vijay Mallya would not alienate or otherwise deal with his assets. This oral undertaking was, however, not recorded by the DRT.

17. The Consortium of Banks had filed W.P.No.38870/2013 and W.P.Nos.39048-39052 and 39053/2013 *inter alia* pointing out that when the applications filed by the Consortium of Banks before the DRT were considered, the oral undertaking given on behalf of Dr. Vijay Mallya was not recorded by the DRT and therefore, a specific order restraining Dr. Vijay Mallya and UBL from transferring, alienating, disposing or creating third-party rights in respect of movable and immovable properties belonging to them would be required to be passed to protect the interests of the Consortium of Banks as well as public inasmuch as the dues were to the extent of INR 6,203 crores against Kingfisher Airlines.

18. Vide order dated 03.09.2013, this Court passed an interim order of injunction in the aforesaid writ petitions against Kingfisher Airlines, UBL and Dr. Vijay Mallya restraining them from transferring, alienating, disposing or creating third-party rights in respect of movable as well as immovable properties belonging to them, until further orders.

19. The Consortium of Banks filed I.A.No.5080/2013 in O.A.No.766/2013 seeking that the pledge created over UBL shares were illegal, null and void and the shares were free of encumbrance. On 09.06.2015, Dr. Vijay Mallya filed a memo in I.A.No.5080/2013 in O.A.No.766/2013 stating that Standard Chartered Bank (SCB) and Unit Trust of India Investment Advisory Services Limited (UTI) were attempting to sell UBL shares and he would not have any objection for issuance of an order of *status quo* in respect of the UBL shares.

20. The DRT, on 19.06.2015, passed an *ex parte ad* interim order in I.A.No.5080/2013 filed by the Consortium of Banks in O.A.No.766/2013 (first interim order). Vide the said order, Dr. Vijay Mallya, SCB, UTI as well as Mr. Sidhartha Mallya were

restrained from transferring, alienating or creating any third-party rights over the UBL shares.

21. The Consortium of Banks filed another application bearing I.A.No.2928/2015 in O.A.No.766/2013 before the DRT, *inter alia*, praying to restrain UTI and SCB from dealing with the UBL shares in any manner. The DRT passed another *ex parte ad interim* order in I.A.No.2928/2015 in O.A.No.766/2013 (second interim order) restraining the SCB and UTI from handing over UBL shares to the petitioner or Mr. Sidhartha Mallya or Dr. Vijay Mallya or any person or entity except the Consortium of Banks.

22. The petitioner, after coming to learn about the first interim order and the second interim order, filed a writ petition bearing W.P.No.37201/2015 before this Court against the aforesaid two interim orders. On 07.11.2015, this Court passed an order staying the operation of the second interim order and directed that the UBL shares would remain with the UTI and also instructed the Consortium of Banks to implead the petitioner in the DRT proceedings. The DRT, vide order dated 05.02.2016, impleaded the petitioner in O.A.No.766/2013 and

the petitioner filed objections to I.A.No.5080/2013 and I.A.No.2928/2015 before the DRT.

23. The Consortium of Banks filed one more application being I.A.No.2188/2016 in O.A.No.766/2013 before the DRT seeking an order of attachment before the judgment attaching 42.86% shares held by Watson in Orange India Holdings (which it claimed was in fact held by Dr. Vijay Mallya) and pending the said I.A., to restrain Watson from making payment to Dr. Vijay Mallya, including dividends in respect of the shares, without prior permission of the DRT.

24. On 17.05.2016, the DRT passed an *ex parte* interim order in I.A.No.2188/2016 (third interim order) attaching the shares held by Dr. Vijay Mallya in Watson and restraining Watson from disbursing any amount to Dr. Vijay Mallya or any person claiming through him.

25. It may be noted that the petitioner was not a party in I.A.No.2188/2016. It filed an application bearing I.A. No.2355/2016 praying for vacation of the third interim order dated 17.05.2016. The SCB also filed I.A.No.2365/2016

seeking vacation of the third interim order passed in I.A.No.2188/2016.

26. The DRT, vide order dated 19.01.2017, dismissed the interim applications filed by the petitioner and SCB and made the first interim order dated 19.06.2015 absolute, and allowed I.A.No.5080/2013, I.A.No.2928/2015, and I.A.No.2188/2016 filed by the Consortium of Banks.

27. The petitioner filed an appeal bearing R.A.No.150/2017 under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as 'the RDDB Act') against the final order dated 19.01.2017 passed by the DRT insofar as it concerned the applications filed by the Consortium of Banks and the petitioner. The petitioner filed an application seeking waiver of pre-deposit. In the meantime, on 03.06.2017, an *ex parte* order was passed by the Recovery Officer of DRT in T.R.C.No.255/2017 in O.A.No.766/2013, whereby 1,04,86,666 shares of UBL owned by Dr. Vijay Mallya and 1,04,64,288 shares of UBL jointly owned by Dr. Vijay Mallya and Mr. Sidhartha Mallya were attached.

28. The Consortium of Banks and SBICAP Trustee Company Limited filed objections to the waiver application filed by the petitioner. The DRAT passed the order dated 21.07.2017 directing the petitioner to make a pre-deposit payment of INR 3,000 crores in two instalments. Aggrieved by the said order passed by the DRAT, the petitioner filed W.P.No.34807/2017 before this Court. This Court, vide order dated 08.08.2017, set aside the waiver order passed by the DRT holding that the petitioner was neither borrower nor creditor nor guarantor, and accordingly directed the DRAT to dispose of R.A.No.150/2017 as expeditiously as possible.

29. After the petitioner became aware of the order passed by the Recovery Officer in T.R.C.No.255/2017 in O.A.No.766/2013, it filed W.P.No.43105/2017 before this Court challenging the said order. This Court passed an interim order dated 20.09.2017 restraining the Recovery Officer from taking any further action pursuant to the order of attachment dated 03.06.2017 passed in T.R.C.No.255/2017 in O.A.No.766/2013. The DRAT, vide impugned order dated 09.10.2018, confirmed the final order dated 19.01.2017 passed by the DRT against which, the present writ petitions have been filed.

(C) LOAN AGREEMENTS AND OTHER CONNECTED AGREEMENTS OF WATSON, ICICI BANK UK. PLC., SCB LONDON AND THE PETITIONER:

30. The petitioner is a financial investment company incorporated in the Netherlands and is a wholly owned subsidiary of Diageo UK PLC, which is listed on the London Stock Exchange and New York Stock Exchange. While Diageo UK PLC is a leading global manufacturer in the beverages alcohol sector, the petitioner itself is not directly involved in the alcohol beverage business in any manner.

31. On 29.07.2013, Watson, a Company incorporated in Mauritius and an Overseas Company of Dr. Vijay Mallya, executed a Facility Agreement with SCB, UK for availing a loan of USD 135 million with the sole purpose to refinance the previous loans granted by ICICI Bank UK. PLC. to Watson during the year 2006-2007. The petitioner executed a third-party Backstop Guarantee Agreement in favour of SCB on 05.08.2013 as per which, the petitioner agreed to repay the sums owed by Watson to SCB, in case Watson defaulted in repayment of loan to SCB.

32. The security package in favour of SCB, as part of refinancing, included the two tranches of UBL shares as mentioned hereinabove which were part of the security package in favour of ICICI UK. PLC. for the previous loan.

33. Pursuant to the Facility Agreement dated 26.07.2013, a Share Pledge Deed dated 29.07.2013 was executed by Dr. Vijay Mallya and Mr. Sidhartha Mallya under which, Dr. Vijay Mallya and Mr. Sidhartha Mallya had agreed to pledge the UBL shares in favour of UTI, the onshore security agent of SCB, as the previous encumbrance created in favour of ICICI UK PLC was no longer surviving in view of the loan amount having been paid to ICICI UK PLC. by availing the facility from SCB.

34. On 01.05.2015, Watson defaulted in repayment of loan to SCB and due to the injunction order passed by the DRT in O.A.No.766/2013, SCB was unable to sell the UBL shares to recover the due amounts and called upon the petitioner to pay the outstanding amount in pursuance to the Backstop Guarantee Agreement dated 05.08.2013 for USD 135 million executed between the petitioner and SCB, which recorded that in case of default in repayment of refinanced SCB loan by Watson if SCB was unable to recover the outstanding amount

within 90 days from the date of default, the petitioner would be liable to repay the outstanding amount along with interest and other necessary expenses.

35. Following the default committed by Watson, UTI acquired voting rights with respect to UBL shares and pursuant to acquisition of the voting rights, a notice dated 11.05.2015 was issued by SCB through UTI to Dr. Vijay Mallya and Mr. Sidhartha Mallya notifying them that if payment of SCB loan was not received within one business day of the receipt of notice, SCB would have the right to sell or otherwise dispose of the UBL shares.

36. It appears that Dr. Vijay Mallya and Mr. Sidhartha Mallya made disclosures on 05.06.2015 in connection with acquisition of voting rights in respect of the UBL shares in the respective stock exchanges. At the same time, as mentioned above, Dr. Vijay Mallya filed a memo in I.A.No.5080/2013 in O.A.No.766/2013 stating that SCB and UTI were attempting to sell the UBL shares and he would have no objection to issuance of an order of *status quo* in respect of the UBL shares.

37. The SCB, on 19.06.2015, had entered into negotiations with Heineken Group to dispose of the UBL shares to them. However, before the SCB could take such an action, the first interim order dated 19.06.2015 came to be passed by the DRT in I.A.No.5080/2013 in O.A.No.766/2013.

38. In terms of the Backstop Guarantee Agreement dated 05.08.2013, the petitioner, on 29.01.2016, paid a sum of USD 140,970,650.95 (inclusive of interest, costs, fees and expenses) to SCB, as the SCB was unable to recover the sum due from Watson or by enforcing the pledge over the UBL shares.

39. On 16.11.2017, the petitioner, along with other group entities, filed a claim before the UK High Court, Commercial Division against Dr. Vijay Mallya, Mr. Sidhartha Mallya, Watson and CAS seeking, *inter alia*, recovery of the amount paid by the petitioner to SCB under the Backstop Guarantee Agreement. Even the Consortium of Banks initiated proceedings before the High Court of Justice, Business and Property Courts of England and Wales (UK Court) bearing No. BR-2018/001805 seeking an order of bankruptcy against Dr. Vijay Mallya. The petitioner filed a summary judgment application before the UK High Court on

18.12.2018 in regard to its claim against Dr. Vijay Mallya, Watson and CAS. A Summary Judgment was passed on 24.05.2019 by the UK High Court, Commercial Division, whereby Watson was held liable to pay USD 135 million to the petitioner and CAS was liable to pay 50% of any such amount unpaid by Watson by 21.06.2019.

40. On 09.12.2019, the Consortium of Banks submitted skeleton arguments in bankruptcy proceedings before the UK Court and represented themselves as unsecured creditors of Dr. Vijay Mallya. The UK Court, vide order dated 09.04.2020, held that the Consortium of Banks indeed had security over the assets of Dr. Vijay Mallya and that, they failed to disclose this fact in the bankruptcy proceedings. The UK Court, vide order dated 18.05.2021, gave permission to the Consortium of Banks to amend the bankruptcy petition filed against Dr. Vijay Mallya.

41. In pursuance to the aforesaid liberty given by the UK Court, the Consortium of Banks, on 24.05.2021, filed a re-amended bankruptcy petition and indicated their willingness to relinquish security over the assets of Dr. Vijay Mallya for the benefit of Vijay Mallya's creditors, in the event of a bankruptcy order made against Dr. Vijay Mallya. On this, the UK Court,

vide order dated 26.07.2021, passed an order and declared Dr. Vijay Mallya as bankrupt.

42. On 09.04.2025, the UK Court passed a judgment rejecting (i) the application filed by Dr. Vijay Mallya seeking permission to appeal against the decision dated 18.05.2021 of the UK Court to allow the Consortium of Banks to amend the bankruptcy petition; and (ii) to appeal against the order dated 26.07.2021 passed by the UK Court declaring the bankruptcy of Dr. Vijay Mallya. The UK Court, vide the same judgment, also allowed the appeal filed by the Consortium of Banks against the UK Court's order dated 09.04.2020 and held that the Consortium of Banks indeed have security over the assets of Dr. Vijay Mallya.

III SUBMISSIONS ON BEHALF OF THE PETITIONER:

43. Dr. Aditya Sondhi, learned Senior Counsel appearing for the petitioner has submitted that on 26.07.2013, Watson had executed a Facility Agreement with SCB UK for availing a loan of USD 135 million for the purpose of refinancing the previous loan granted by ICICI Bank UK. The petitioner had executed a third-party Backstop Guarantee Agreement in favour of SCB on

05.08.2013, wherein the petitioner had agreed to repay the sums owed by Watson to SCB, in case Watson defaulted to repay the loan to SCB. The refinancing included the aforesaid UBL shares, which were part of the security package in favour of ICICI UK PLC for the previous loan. Pursuant to the Facility Agreement dated 26.07.2013, a Share Pledge Deed dated 29.07.2013 was executed by Dr. Vijay Mallya and Mr. Sidhartha Mallya under which they agreed to pledge the UBL shares in favour of UTI, the onshore security trustee of SCB, which was transferred from previous encumbrance.

44. It is further submitted that the petitioner, in compliance with its contractual obligation under the Backstop Guarantee Agreement had paid to the SCB, USD 140.97 million which would include all outstanding amounts owed by Watson along with interest, costs and expenses. The petitioner stepped into the shoes of SCB and was subrogated to the rights of SCB over all the relevant security, which was confirmed vide Subrogation Acknowledgment Agreement dated 01.02.2016 executed between the petitioner and SCB. Though the rights would include first ranking pledge over the UBL shares as a Pawnee of UBL shares, the petitioner is first entitled to exercise its rights

in respect of the pledged shares and no other creditor could claim priority over those shares. In support of this argument, learned Senior Counsel has placed reliance on the decision of the Supreme Court in ***BANK OF BIHAR vs STATE OF BIHAR ([1972] 3 SCC 196)***. It is submitted that in the present case, the petitioner enjoys an independent legal right pursuant to the pledge in favour of SCB created over the UBL shares. This independent pledge, as subrogated to the petitioner, is superior to any claim of the Consortium of Banks.

45. It is submitted by learned Senior Counsel that the pledge in favour of SCB was publicly disclosed by Dr. Vijay Mallya and Mr. Sidhartha Mallya. It is further submitted that since the UBL shares were in dematerialized form, any pledge of shares in dematerialized form could be created only in the manner specified in Section 12 of the Depositories Act, 1996 read with Regulation 58 of the SEBI (Depositories and Participants) Regulations, 1996. These regulations would expressly require the pledgor to raise a pledge request with the depository participant and do not provide for direct transfer of a pledge from one lender to another lender and this is the only manner of creation of pledge.

46. In pursuance to the creation of pledge in respect of the UBL shares by Dr. Vijay Mallya and Mr. Sidhartha Mallya in the year 2013, UTI made stock exchange disclosure on 30.08.2013, and Dr. Vijay Mallya and Mr. Sidhartha Mallya made stock exchange disclosure on 02.09.2013 and the pledge came into the public domain. Any other procedure other than prescribed in the Regulations would not amount to pledge as per SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

47. Dr. Aditya Sondhi, learned Senior Counsel has submitted that the pledge created in favour of UTI, as Security Trustee of SCB, is not in the nature of an independent or fresh security, but a continuation of the earlier security created in favour of ICICI UK. PLC. in 2009 in terms of the Refinancing Agreement dated 26.07.2013.

48. It is further submitted that the MDRA dated 21.12.2010 was entered into by Kingfisher Airlines under which, the Consortium of Banks granted a loan of INR 6,203 crores to Kingfisher Airlines. The Consortium of Banks is claiming interest in the UBL shares by virtue of the Personal Guarantee executed

by Dr. Vijay Mallya dated 21.12.2010 pursuant to the MDRA. The security clause under the MDRA does not include any of the UBL shares. Under Clause 5.1(g) of the MDRA, the security taken by the Consortium of Banks was a pledge of certain identified shares of other companies such as Kingfisher Airlines and not the UBL shares. It is further submitted that the UBL shares were already encumbered under the prior loan given by ICICI UK. PLC. from 31.03.2009. The MDRA would suggest that the Consortium of Banks was aware of the prior encumbrance over the UBL shares and for that, they took a pledge over other shares and did not explicitly include the UBL shares.

49. It is further submitted that the Pledge Deed dated 29.07.2013 was not a fresh and independent security and was with the earlier ICICI UK arrangement. The UBL Shares were consistently encumbered from 31.03.2009 onwards and were also continued till the Pledge Deed dated 29.07.2013 executed by Dr. Vijay Mallya and Mr. Sidhartha Mallya in favour of UTI, the onshore security trustee of SCB.

50. It is submitted that the Personal Guarantee given by Dr. Vijay Mallya would not constitute security inasmuch as under the MDRA, there was no encumbrance created over any

assets of Dr. Vijay Mallya. In fact, Clause 5(i)(c) of the Personal Guarantee records Dr. Vijay Mallya's confirmation that the Personal Guarantee would not result in the existence of, nor oblige to create, any encumbrance over all or any of his present or future revenues or assets. The said clause is categorical that the Personal Guarantee created no encumbrance over the assets of Dr. Vijay Mallya. Clause 5(ii)(g)(2) of the Personal Guarantee records that Dr. Vijay Mallya would not dispose of his assets without the prior written approval of the lenders and it would neither confer any right over any specific property nor makes any reference to the UBL shares.

51. It is further submitted that in the skeleton arguments produced by the Consortium of Banks before the UK Court in the bankruptcy proceedings against Dr. Vijay Mallya, the Consortium of Banks admitted that they had no security over Dr. Vijay Mallya's assets, whether by personal guarantee or otherwise. It is, therefore, submitted that the DRT has incorrectly held the Consortium of Banks as a secured creditor in the final order dated 19.01.2017.

52. Dr. Aditya Sondhi, learned Senior Counsel has further submitted that the Personal Guarantee is only a negative contractual covenant enabling a claim for damage against Dr. Vijay Mallya, and a guarantee is not a security. A security confers a right against specific property whereas, a guarantee confers only a personal right against the guarantor. Clause 5(ii)(g)(2) of the Personal Guarantee is a bare contractual covenant not to dispose of the assets without approval. A guarantee, therefore, created no interest in or charge over any asset, let alone UBL shares which it did not even mention.

53. It is further submitted that the Personal Guarantee of Dr. Vijay Mallya in MDRA was never in the public domain and cannot serve to undermine the rights of third parties such as the petitioner, which has a valid security interest over the UBL shares. The petitioner, in any way, could not have known the personal undertaking given by the counsel on behalf of Dr. Vijay Mallya before the DRT as the petitioner was not a party to the said proceedings and the said undertaking was not even recorded. This Court passed the injunction order with respect to the UBL shares only on 03.09.2013 by which time, the UBL shares had already been pledged in favour of UTI.

54. It is further submitted that the contempt proceedings initiated against Dr. Vijay Mallya by the Consortium of Banks in CCC No.1244/2014, wherein an order dated 20.10.2016 was passed by this Court holding Dr. Vijay Mallya guilty of contempt since the pledge of UBL shares was in violation of the purported oral undertaking, would have no bearing to the present writ petitions inasmuch as the observations in the aforesaid order are only *prima facie* and do not prejudice the rights of the accused at the time of trial, in the event charges were to be framed. These observations were made in 2016, well after the payment was made by the petitioner under the Backstop Guarantee Agreement and the petitioner's subrogation to the pledge over the UBL shares. In any way, the petitioner was not a party in CCC No.1244/2014. This Court had declined to nullify the transactions regarding the pledge being created by Dr. Vijay Mallya and Mr. Sidhartha Mallya in favour of UTI and had disposed of the contempt proceedings with liberty to revive them once Dr. Vijay Mallya's presence would be secured. Till date, no such application has been filed by the Consortium of Banks for revival of the contempt proceedings.

55. It is submitted that a contempt proceeding cannot retrospectively convert an unrecorded oral undertaking into a security in favour of the Consortium of Banks, or invalidate, collaterally, a valid pledge created in favour of a *bona fide* third party, which was never a party in the contempt proceedings.

56. It is further submitted that notwithstanding the claim of any prior right of the Consortium of Banks over the UBL shares, the pledge in favour of SCB and petitioner, grants superior security over the claim of the Consortium of Banks. In this regard, learned Senior Counsel has placed reliance on the judgment of Calcutta High Court in ***CO-OPERATIVE HINDUSTHAN BANK LTD. vs SURENDRANATH DE (1931 SCC OnLine CAL 224)***.

57. It is submitted by the learned Senior Counsel that the impugned orders incorrectly treats the petitioner as part of the Vijay Mallya Group and the whole premise of the order is incorrect. It is further submitted that the petitioner, holding a first ranking pledge over the UBL shares, has not been able to recover any dues due to the order passed by the DRT. On the other hand, the Consortium of Banks have recovered far in excess of the principal amount decreed in their favour by the

DRT and DRAT i.e., approximately INR 6,203 crores, which is evident from the statement made by the Hon'ble Finance Minister on the floor of Lok Sabha on 17.12.2024 stating that assets worth INR 14,131.6 crores were restored from Dr. Vijay Mallya to the Consortium of Banks. It is, therefore, submitted that the present writ petitions be allowed and the impugned orders be set aside and the petitioner should be allowed to recover its dues by disposing of the UBL shares in respect of the Backstop Guarantee Agreement entered into by the petitioner with SCB, whereby the petitioner had paid USD 140.97 million to SCB.

IV SUBMISSIONS ON BEHALF OF THE CONSORTIUM OF BANKS:

58. Mr. Vikram Huilgol, learned Senior Counsel appearing for the Consortium of Banks has submitted that the petitioner's claim over the UBL Shares is based on a series of Facility Agreements between Watson and ICICI Bank UK PLC. Pursuant to the Facility Agreements dated 28.09.2007, 04.10.2007 and 29.10.2007, Dr. Vijay Mallya and Mr. Sidhartha Mallya had executed a Non-Disposal Agreement dated 31.03.2009. Clause-B of the said Non-Disposal Agreement makes it apparent that the payments due under the Facility Agreements

between ICICI UK PLC and Watson were only supported by Personal Guarantees to be provided by Dr. Vijay Mallya and Mr. Sidhartha Mallya and such Guarantees were further supported by Non-Disposal Undertakings (NDUs), *inter alia*, over the UBL Shares. No security was created under the Non-Disposal Agreement as the payment obligations were merely supported and were not secured by the Personal Guarantees. Clause 3.1 of the Non-Disposal Agreement, it would be apparent that the Non-Disposal Agreement dated 31.03.2009 did not create any security and the UBL shares were to be provided as security only when the Personal Guarantors defaulted the payment obligations under the said agreement.

59. It is further submitted by the learned Senior Counsel that Clause 5.1 of the MDRA entered into between Kingfisher Airlines and Consortium of Banks provided for creation of security for securing performance of the payment obligations under which, sub-clause (h) provides for Guarantees i.e., Personal Guarantee from Dr. Vijay Mallya and Corporate Guarantee from UBL. In furtherance of the same, a Personal Guarantee dated 21.12.2010 was executed between Dr. Vijay Mallya and the Consortium of Banks. Clause 5(ii)(g)(2)

provided an undertaking not to create any encumbrance over the shares without the written permission of the Consortium of Banks.

60. Learned Senior Counsel has further submitted that the Share Pledge Deed dated 12.04.2013 executed between Dr. Vijay Mallya, Mr. Sidhartha Mallya and ICICI UK would clarify that the UBL shares were never offered as security prior to the execution of the Share Pledge Deed. On account of the default committed by Watson in repayment, the personal guarantors, Dr. Vijay Mallya and Mr. Sidhartha Mallya, were to act on their respective guarantees and subsequently, 1,04,86,666 equity shares of UBL held by Dr. Vijay Mallya and 27,07,134 equity shares of UBL jointly held by Dr. Vijay Mallya and Mr. Sidhartha Mallya were offered to secure the facilities availed by Watson from ICICI UK.

61. It is contended by the learned Senior Counsel for the Consortium of Banks that the Facility Agreement dated 26.07.2013 entered into between Watson and SCB for USD 135 Million was neither a mere refinancing of the ICICI-Watson loan nor an assignment of the loan from ICICI UK to SCB as ICICI UK was not a party to the said Facility Agreement. Clauses

3.1(a) and 3.1(b) of the said Facility Agreement provide that the loan of USD 135 Million comprised of two facilities (i) Facility A for USD 119 Million which was to be used in full towards repayment of the ICICI Debt; and (ii) Facility B for USD 16 Million which was to be used as per the purposes specified in Clause 3.1(b). The Facility Agreement was a separate and distinct loan transaction between SCB and Watson and only a portion of the Facilities was agreed to be utilised for the purpose of repaying Watson's debt to ICICI UK. This, combined with the condition specified that the earlier Share Pledge Deed executed in favour of ICICI UK was to be terminated before the security could be created in favour of SCB, unequivocally establishes that the Share Pledge in the present Facility Agreement is an independent security arrangement, and the Agreement envisaged the extinguishment of the existing ICICI security and creation of a new security package in favour of SCB.

62. It is submitted that on 29.07.2013, Dr. Vijay Mallya, Mr. Sidhartha Mallya and UTI, the onshore security trustee of SCB, executed a Share Pledge Agreement in pursuance to the Facility Agreement dated 26.07.2013. The terms of the Share

Pledge Agreement provide that repayments are secured by, *inter alia*, a pledge over UBL Shares being in consideration of the facility provided by SCB UK to Watson.

63. It is further contended that the oral undertaking given by the counsel for Dr. Vijay Mallya before the DRT in O.A.No.766/2013 was taken judicial notice by this Court on 03.09.2013 in W.P.No.38870/2013. Further, this Court, vide order dated 20.10.2016 passed in CCC No.1244/2014 which concerned the encumbrance created over UBL Shares being contrary to the oral undertaking, admitted the said undertaking and the petitioner cannot dispute the factum of the same.

64. It is submitted that on 05.08.2013, the petitioner entered into a Backstop Guarantee Agreement with SCB, wherein it was provided that SCB was secured by the Security Documents as defined to mean those documents securing the Facility Agreement dated 26.07.2013 i.e., the Share Pledge Deed dated 29.07.2013. Although the Backstop Guarantee Agreement does not define the list of documents to constitute security documents' it cannot be disputed that the petitioner was aware of the Pledge Deed dated 29.07.2013.

65. It is further submitted that upon Watson committing default in repayment of loan to SCB, the petitioner, discharging its obligations under the Backstop Guarantee Agreement, entered into a Subrogation Agreement dated 01.02.2016 and subrogated all the rights previously held by SCB and its agents. The SCB's only right over UBL Shares was created vide Share Pledge Deed dated 29.07.2013. Since the same is contrary to the oral undertaking of Dr. Vijay Mallya dated 26.07.2013, whereby Dr. Vijay Mallya undertook not to encumber his assets which were part of the Personal Guarantee dated 21.12.2010, the petitioner was well-aware of the fact that no rights accrue to it by way of the Pledge Deed dated 29.07.2013. Instead, the petitioner is premising its claim on the supposed link to the original Watson-ICICI loan and the Non-Disposal Undertaking dated 31.03.2009, which is futile as it has been already clarified that the transactions between ICICI-Watson and SCB-Watson are distinct and thus, no rights accrue from the Backstop Guarantee Agreement and the Subrogation Agreement.

66. It is further submitted by the learned Senior Counsel that the abovementioned UBL Shares were attached vide Provisional Attachment Order passed by the Enforcement Directorate (ED) in Case No.16/2016, which further held that Dr. Vijay Mallya, in violation of the loan condition, has entered into an arrangement with Diageo and has neither informed the Consortium of Banks about the settlement reached with Diageo nor has deposited the amount. The Adjudicating Authority under the Prevention of Money Laundering Act, 2002 (PMLA), vide order dated 22.02.2017 in O.C.No.639/2016, confirmed the Provisional Attachment Order and observed that the petitioner is a dummy company of Dr. Vijay Mallya and all the properties attached including the UBL shares were proceeds of crime.

67. It is further submitted that the Consortium of Banks filed an application under Second Proviso to Section 8(8) read with Section 8(7) of the PMLA in PMLA Case No.5/2018 before the PMLA (Special Court), Mumbai, for restoration of assets as per the order of the Recovery Officer dated 03.06.2017. Vide order dated 24.05.2021, the PMLA Court restored the schedule properties to the Banks through the Recovery Officer, DRT and

directed for furnishing bond undertaking as per Rule 3-A(2) of the Prevention of Money Laundering (Restoration of Properties) Rules, 2016. The same was executed on 01.06.2021 and vide order dated 09.07.2021, the attached properties including UBL shares were transferred by the ED to the Consortium of Banks through the Recovery Officer, DRT.

V POINTS FOR CONSIDERATION:

68. Having considered the pleadings and the submissions of the learned Senior Counsel appearing for the parties, the following points arise for consideration in the present writ petitions:-

(i) Whether the Non-Disposal and Safety Net Arrangement Agreement dated 31.03.2009 executed by Dr. Vijay Mallya and Mr. Sidhartha Mallya in respect of the UBL shares in furtherance of the Personal Guarantees provided by Dr. Vijay Mallya and Mr. Sidhartha Mallya for the loans advanced by ICICI UK PLC to Watson under the Facility Agreements between Watson and ICICI UK PLC, created a security?

(ii) Whether the Facility Agreement dated 26.07.2013 entered into between Watson and SCB for USD 135 million was a refinancing of

ICICI-Watson loan or assignment of the loan from ICICI UK PLC to SCB, or the Facility Agreement was separate and distinct loan transaction between SCB and Watson?

(iii) Whether the Personal Guarantee dated 21.12.2010 from Dr. Vijay Mallya and Corporate Guarantee from UBL under Clause 5.1 of the MDRA entered into between Kingfisher Airlines and Consortium of Banks wherein it was provided under Clause 5(ii)(g)(2) not to create any encumbrance, would not have the effect on the Facility Agreement dated 26.07.2013 entered into between Watson and SCB for USD 135 million and Share Pledge Agreement dated 29.07.2013 entered into between Dr. Vijay Mallya, Mr. Sidhartha Mallya and UTI, the Onshore Security Trustee of SCB?

(iv) Whether the oral undertaking dated 26.07.2013 given by the counsel for Dr. Vijay Mallya before the DRT in O.A.No.766/2013, which was allegedly not recorded in the order by the DRT, would have an overriding effect on the Facility Agreement dated 26.07.2013, and whether the Share Pledge Agreement dated 29.07.2013 could not be given effect to?

(v) Whether Dr. Vijay Mallya could have created a charge over 1,04,64,288 UBL Shares

jointly held by him and Mr. Sidhartha Mallya by giving a Personal Guarantee under the MDRA?

(vi) Whether, when the assets worth INR 14131.6 crores besides the UBL shares have been restored from Dr. Vijay Mallya to the Consortium of Banks as per the statement of the Hon'ble Finance Minister on the floor of the Lok Sabha on 17.12.2024, would it be justified for the Consortium of Banks to lay their claims over the UBL shares inasmuch as the Consortium's dues for which O.A.No.766/2013 was filed, was only to the extent of INR 6203 crores?

VI ANALYSIS AND CONCLUSION:

69. UBL is a Company listed on the Bombay Stock Exchange and National Stock Exchange. UBL Shares constitute 7.92% of the total shareholding of UBL. The details of the subject matter of these writ petitions are as under:-

DP	CLIENT ID	ISIN	NAME	SCRIP	NUMBER
ICICI Bank	20016170	INE686F01025	Vijay Mallya	United Breweries Ltd.	1,04,86,666
ICICI Bank	20016189	INE686F01025	Vijay Mallya & Siddharth Mallya	United Breweries Ltd.	1,04,64,288

Re. Point Nos.(i) and (ii):

70. Pursuant to the Facility Agreements between Watson and ICICI UK PLC dated 28.09.2007, 04.10.2007 and 29.10.2007, ICICI UK PLC had made available (i) a loan facility up to an amount of USD 22 million; (ii) a loan facility up to an amount of USD 28 million; (iii) a loan facility up to an amount of EUR 12,250,000; (iv) a loan facility up to an amount of EUR 3,750,000; (v) a loan and guarantee facility up to an amount of USD 40 million; (vi) a loan and guarantee facility up to an amount of USD 4 million; and (vii) a loan facility up to an amount of USD 8 million, which have been described in the Non-Disposal and Safety Net Arrangement Agreement dated 31.03.2009 as 'Facility'. These Facility Agreements were supported by, *inter alia*, the Personal Guarantees of Dr. Vijay Mallya and Mr. Sidhartha Mallya. The Personal Guarantees were further supported by a non-disposal undertaking over the shares of the companies executed, *inter alia*, amongst Dr. Vijay Mallya, Mr. Sidhartha Mallya and IDBI Trusteeship Services Limited, an agent of ICICI UK PLC. The details of the shares under the non-disposal undertaking for the Personal Guarantees of Dr. Vijay Mallya and Mr. Sidhartha Mallya under

the Non-Disposal and Safety Net Arrangement Agreement dated 31.03.2009 are provided in Schedule VI to the said agreement, which would read as under:-

Name of Company	Name of NDU Provider	No. of Shares	NDU Provider's Depository Participant	NDU Provider's DP Account	ISIN
United Breweries (Holdings) Limited	Dr. Vijay Mallya	2,350,000	ICICI Bank Ltd. (DP ID: 301348)	Client ID: 20016170	INE696A01025
United Breweries (Holdings) Limited	Dr. Vijay Mallya & Sidhartha Mallya (jointly)	2,825,000	ICICI Bank Ltd. (DP ID: 301348)	Client ID: 20016189	INE696A01025
United Breweries Limited	Dr. Vijay Mallya	10,486,666	ICICI Bank Ltd. (DP ID: 301348)	Client ID: 20016170	INE686F01025
United Breweries Limited	Dr. Vijay Mallya & Sidhartha Mallya (jointly)	10,464,288	ICICI Bank Ltd. (DP ID: 301348)	Client ID: 20016189	INE686F01025

71. Clause 3 of the non-disposal arrangement, particularly Clause 3.1(d), provides that Dr. Vijay Mallya and Mr. Sidhartha Mallya shall not, without the prior written consent of the ICICI

UK PLC, permit creation of any encumbrance over the shares which were Escrow assets. Clauses 3.1(I) of the Non-Disposal and Safety Net Arrangement Agreement would provide that in case of non-payment of the loans advanced in pursuance to the Facility Agreements, the shares (Escrow assets) would be sold, transferred, assigned or otherwise disposed of to realise the unpaid dues under the Facility Agreements.

72. This case is concerned only with two tranches of shares i.e., the shares held by Dr. Vijay Mallya and the shares jointly held by Dr. Vijay Mallya and Mr. Sidhartha Mallya, as mentioned above in United Breweries Ltd. (UBL Shares).

73. On 12.04.2013, a Share Pledge Deed was executed between Dr. Vijay Mallya, Mr. Sidhartha Mallya and ICICI UK PLC. Under this Share Pledge Deed, 1,04,86,666 UBL shares of Dr. Vijay Mallya and 27,07,134 UBL shares jointly held by Dr. Vijay Mallya and Mr. Sidhartha Mallya representing 4.99% of the paid up capital of the UBL were pledged in favour of ICICI UK PLC on account of the existing defaults in repayment under the Facility Agreements. Though Dr. Vijay Mallya's and Mr. Sidhartha Mallya's shareholding in UBL was 7.92% of the paid up capital, the pledge was created only in respect of the

UBL shares representing 4.99% of the paid up capital in favour of ICICI UK PLC.

74. We are, therefore, of the view that the Share Pledge Deed dated 12.04.2013 executed by Dr. Vijay Mallya and Mr. Sidhartha Mallya in respect of two tranches of UBL shares i.e., 1,04,86,666 shares held by Dr. Vijay Mallya and 27,07,134 shares jointly held by Dr. Vijay Mallya and Mr. Sidhartha Mallya is a fresh pledge created on account of defaults in repayment of the loan under the Facilities by Watson, and the shares became encumbered under the said Pledge Deed. ICICI UK PLC became the Pawnee of the aforesaid two tranches of UBL shares under Section 172 of the Indian Contract Act, 1872 as the Share Pledge Deed dated 12.04.2013 is governed by the Indian Laws.

75. An independent agreement between the petitioner and SCB called 'Guarantee Commitment Agreement' was entered into under which, in pursuance to the Term Sheet dated 04.07.2013, the SCB had agreed to extend Term Loan Facility of USD 135 million, whereby the petitioner undertook that it would guarantee SCB, following the execution of the Facility Agreement between SCB and Watson for USD 135 million, that whenever Watson could not pay any amount due in connection

with the Facility Agreements, the petitioner would pay the dues within 90 days after the date of Demand Notice issued by the trustee/agent of SCB as the petitioner would be the Principal Obligor in place of Watson/borrower.

76. Thereafter, the Facility Agreement dated 26.07.2013 was entered into between Watson, SCB and UTI, the Onshore Security Trustee of SCB. Under the said Facility Agreement, the agreements entered into by ICICI UK PLC, including the Share Pledge Deed and other agreements were terminated. An amount equal to ICICI debt then outstanding and Facility of USD 500,000 which was on account of interest due in relation to the Facility and other fees, costs, expenses or commissions were agreed to be provided. Thus, USD 135 million was paid to ICICI UK PLC towards discharge of its dues and the agreements entered into between ICICI UK PLC and Watson as also the Share Pledge Deed got terminated. Pursuant to the said Facility Agreement, a fresh pledge on two tranches of UBL shares i.e., 1,04,86,666 held by Dr. Vijay Mallya and 1,04,64,288 jointly held by Dr. Vijay Mallya and Mr. Sidhartha Mallya were created in favour of UTI, the Onshore Security Trustee of SCB, vide Share Pledge Agreement dated 29.07.2013.

77. Thereafter, the petitioner entered into a Backstop Guarantee Agreement dated 05.08.2013 with SCB in respect of the Facility of USD 135 million made available by SCB to Watson in pursuance to the Facility Agreement dated 26.07.2013. Under the said Backstop Guarantee Agreement, the petitioner guaranteed that if the borrower would not pay any amount when due under or in connection with the finance documents, which would include the Facility Agreement dated 26.07.2013, the petitioner would pay within 90 days after the date of Demand Notice issued by the agent of SCB instead of the borrower and the petitioner would be treated as the Principal Obligor. The Guarantee Fee was USD 5 million to be paid to the petitioner by SCB. Clause 2.4 of the said Backstop Guarantee Agreement provides for subrogation that all finance documents and titles vested in SCB would be transferred in favour of the petitioner.

78. It may also be relevant to mention here that a Share Pledge Agreement was executed on 29.07.2013 between Dr. Vijay Mallya, Mr. Sidhartha Mallya and UTI, the Onshore Security Trustee of SCB, whereby a pledge was created over

two tranches of UBL shares i.e., 1,04,86,666 shares held by Dr. Vijay Mallya and 1,04,64, 288 shares jointly held by Dr. Vijay Mallya and Mr. Sidhartha Mallya in respect of the Facility of USD 135 million to Watson provided by SCB.

79. Thus, on a reading of the aforesaid agreements, it is clear that the Facility Agreement between Watson, ICICI UK PLC and the Share Pledge Deed executed by Dr. Vijay Mallya and Mr. Sidhartha Mallya got terminated on the Facility Agreement dated 26.07.2013 being executed between SCB and Watson. A fresh Share Pledge Agreement was executed by Dr. Vijay Mallya and Mr. Sidhartha Mallya on 29.07.2013 in favour of SCB for securing the Facility of USD 135 million extended by SCB in favour of Watson. Thus, the Share Pledge Agreement dated 12.04.2013 executed by Dr. Vijay Mallya and Mr. Sidhartha Mallya created a security for the loan and the Facility provided by ICICI UK PLC. However, the same got discharged on execution of the Facility Agreement dated 26.07.2013 between SCB and Watson.

80. Considering the different agreements, we are of the considered view that the Facility Agreement entered into between SCB and Watson on 26.07.2013 was a separate

agreement for the purpose of providing the Facility of USD 135 million to Watson to repay the loan obligation to ICICI UK PLC. Therefore, once the agreements with the ICICI UK PLC got terminated, there was no pledge on the shares of UBL. Further, the Share Pledge Deed dated 12.04.2013 executed by Dr. Vijay Mallya and Mr. Sidhartha Mallya in favour of ICICI UK PLC was only for 4.99% of the UBL paid up capital whereas, under the Share Pledge Agreement dated 29.07.2013 in favour of SCB, the pledge is in respect of 7.92%, as mentioned above. Therefore, we hold that the agreements entered into between ICICI UK PLC with Watson, Dr. Vijay Mallya and Mr. Sidhartha Mallya were separate and distinct agreements than the agreements entered into between SCB with Watson, Dr. Vijay Mallya and Mr. Sidhartha Mallya as also the Backstop Guarantee Agreement executed by the petitioner.

81. We are, therefore, of the view that it cannot be said that the shares of Dr. Vijay Mallya and Mr. Sidhartha Mallya had remained encumbered throughout from the date of initial Facility Agreement and the Share Pledge Agreement dated 12.04.2013 between ICICI UK PLC and Watson, and the Share Pledge Agreement dated 29.07.2013 in respect of UBL Shares

in favour of SCB was in continuation of earlier NDU and Share Pledge Deed with ICICI UK PLC.

Re: Issue No.(iii)

82. We have gone through the relevant Clauses of the agreements i.e., the Facility Agreement dated 26.07.2013 entered into between SCB and Watson, Share Pledge Agreement dated 29.07.2013 entered into between Dr. Vijay Mallya, Mr. Sidhartha Mallya and UTI, the Onshore Security Trustee of SCB as also the Backstop Guarantee Agreement dated 05.08.2013 entered into between SCB and the petitioner. The Facility of USD 135 million by SCB to Watson was not a refinancing of ICICI-Watson loan nor was it an assignment of the loan from ICICI UK PLC to SCB inasmuch as ICICI UK PLC was not a party to the said Facility Agreement. Therefore, the agreements between SCB and Watson as also the Share Pledge Agreement entered into between Dr. Vijay Mallya, Mr. Sidhartha Mallya and UTI, the Onshore Security Trustee of SCB, were independent of the loan agreements between ICICI UK PLC and Watson.

83. A Personal Guarantee creates a personal obligation to the lender. It does not by itself create a proprietary security interest in the assets, unless the Personal Guarantee contains the list of assets and restrains from creating any encumbrance over the assets of the guarantor.

84. Clause 5(ii)(g)(2) of the Personal Guarantee does not list out the assets, particularly the shares in question, for not creating any encumbrance on those assets, specifically the UBL shares. The UBL shares were encumbered under the Non-Disposal and Safety Net Arrangement Agreement dated 31.03.2009 executed by Dr. Vijay Mallya and Mr. Sidhartha Mallya in furtherance of the Personal Guarantees provided by Dr. Vijay Mallya and Mr. Sidhartha Mallya for the loans advanced by ICICI UK PLC under the Facility Agreements. The Facility Agreement and the Non-Disposal and Safety Net Arrangement Agreement dated 31.03.2009 were executed prior to the MDRA dated 21.12.2010.

85. A Personal Guarantee coupled with a covenant not to encumber unspecified assets will not prevail over a subsequently created pledge of specifically identified assets, unless the earlier document itself created an enforceable

proprietary security such as, a charge over those assets. A personal guarantee is, in substance, a personal promise to pay. It does not, by itself, create any interest, lien, charge or priority over the guarantor's property. The question whether the 'negative lien' or 'no encumbrance' clause creates a proprietary security depends on the language of the document and the parties' intention.

86. In ***BANK OF INDIA LTD. vs RUSTOM FAKIRJI COWASJEE (1954 SCC ONLINE BOM 64)***, the Bombay High Court has held that a charge is not created merely by using expressions such as 'negative lien.' There must be sufficient language indicating an intention to create an encumbrance enforceable against the property. The relevant paragraphs are extracted hereunder:

"61. Do these words "negative lien" and this declaration and undertaking indicate an intention to create a right in favour of the bank to look to those assets as a security to be availed of by bringing them to sale in case of default? Mr. Kolah has laid considerable emphasis on this declaration and this assurance and has argued that they must be interpreted as an unmistakable expression of such intention. The greatest stress was laid on what were said to be almost identical expressions in the various decisions cited by learned counsel and it was said that those expressions were interpreted as creating charge on property.

62. As to those expressions, it was argued by Mr. Modi, that in all those decisions the borrower had stated that he would not be entitled in any way to transfer or alienate the property either by sale, mortgage, charge or otherwise. **There is to my mind ample scope for noting the difference in the expressions used in almost all of these cases which included the promise that the property would not be sold and the language in which the assurance in the case before me is given. Here the assurance does not extend to any restriction on the sale of the assets.**

63. **It has also to be noted that this assurance does not reach to the right to sell any assets of the borrower even though the business of the borrower did not consist of buying and selling goods.** The airline company, it was argued by Mr. Modi, could have at any time sold any of its assets without committing any breach of the assurance. An attempt was made by Mr. Kolah to show that the expressions gift and exchange were not mentioned in most of the cases relied upon by him, and it was said that in '32 Bom 386 (M)', the restriction was only against redemption of the property already mortgaged under a previous transaction and there was nothing to prevent a sale of that equity of redemption.

64. **But as I have already observed that decision turned on its peculiar facts. It did not turn on the extent or amplitude of the words of restriction. Now one thing does emerge from all the cases cited before me that in substance the borrower in all those cases stated that he would not in any way transfer or alienate the property mentioned in the writing, and the dominant intention appeared to be that the property was to remain intact or segregated or preserved so as to be available for payment of the debt in case of default. This obviously would not be**

assured if the debtor is to remain altogether free to sell the property.

65. I do not, however, intend to particularize the words, "transfer, alienate, sale, mortgage, charge of hypothecate" and any other words importing total or partial restriction on the disposal of or dealing with the property by the borrower. Nevertheless the distinction sought to be drawn is one which is real and cannot be ignored.

66. It is always unsafe to construe a document with reference to similar words in another document. In the Bombay case decided by Sir Lawrence Jenkins C.J. and Batchelor J., the Court of Appeal was examining documents of persons ignorant of legal phrases and legal concepts. And in most of the other decisions pointed out to me the parties were laymen & not well-versed in matters of formal documents.

67. For all these reasons I would prefer to construe the documents before me without unduly particularising the expressions used in them and to examine them in the light of the rule of liberal interpretation which is based on a fundamental principle. It cannot be ignored that the parties to the transaction before me were a bank acting through its general manager and accountant and an airline company, acting through its board of directors. These were not persons ignorant of legal phrases proper to express their intention or of legal steps necessary to carry them into effect.

68. This is an important surrounding circumstance which I have to bear in mind. Therefore, although the absence of any formal expression in a document cannot be permitted to prevent the true intent of the parties being effectuated, the Court has to give some consideration to relevant surrounding circumstances such as the

position of the parties and their probable knowledge or ignorance of words in-which to express their intention.

69. **No particular formality is required by our law for the creation of a charge on moveable property. But since formality is not insisted upon, it becomes incumbent upon the Court before it can hold that a charge was created to satisfy itself that the intention to make any specified property security for the payment of the money charged thereon, appears in a manner which leaves no doubt that the parties had agreed that in case of default there would be a right of payment out of the property.**

70. **While the Court does not insist upon any particular form of words and does not allow defects of expression in this matter to prevent the carrying out of the common intention of the parties, that intention has to be ascertained by the proper construction of the words used by the parties themselves. The Court refuses to read words in a document, which are not there when the document, as it stands, is such that a rational meaning can be given to it read as a whole, for to hold differently would be tantamount to making out a different agreement for the parties.** The question is not what the parties may have intended but of ascertainment of the meaning of what they have said they intended.

...

75. There is no pleading, and no issue, before me relating to any negative lien of a banker which by usage or custom may be said to confer any such right of bringing the property to sale. **It is difficult for me to see that when the positive general lien of a banker does not confer on him any power of bringing the property to sale, how such power can reasonably be implied in case of a negative lien, when the**

parties have not chosen to state that it was their intention that there was to be such right and there are no other words from which such intention could be inferred. The words "negative lien" in the resolution, in my judgment, do not in any way add to the effect of the assurance whereby the airline company became bound to keep its assets unincumbered. But as I have already observed the negative lien is given in the form of a declaration and an assurance contained in the resolution itself and, if anything, the expression "negative lien" seems rather incompatible with any implied right to bring the property to sale.

(emphasis supplied)

87. Where the earlier covenant concerns unspecified or general assets and does not identify the property or confer a right of enforcement against it, it will generally remain a contractual negative covenant. A breach may give rise to a claim for damages, injunction or other contractual relief against the guarantor, but it ordinarily does not defeat a later pledgee's security interest in specifically pledged assets. A pledge requires actual or constructive delivery of goods to the pledgee and creates a special priority for security interest in favour of the pledgee. The general property remains with the pledgor, but the pledgee obtains rights sufficient to retain or sell the pledged assets in accordance with the Indian Contract Act, 1872.

88. In **LALLAN PRASAD vs RAHMAT ALI (1966 SCC ONLINE SC 266)**, it has been held that the delivery is essential to the pledge and the pledgee obtains a special priority over the goods. The relevant paragraph is extracted hereunder:

*"16. The second question would then be whether the appellant was entitled to recover the balance of the said loan in view of his denial of the pledge and his failure to offer to redeliver the goods. Under the common law a pawn or a pledge is a bailment of personal property as a security for some debt or engagement. **A pawner is one who being liable to an engagement gives to the person to whom he is liable a thing to be held as security for payment of his debt or the fulfilment of his liability. The two ingredients of a pawn or a pledge are : (1) that it is essential to the contract of pawn that the property pledged should be actually or constructively delivered to the pawnee and (2) a pawnee has only a special property in the pledge but the general property therein remains in the pawner and wholly reverts to him on discharge of the debt. A pawn therefore is a security, where, by contract a deposit of goods is made as security for a debt. The right to property vests in the pledgee only so far as is necessary to secure the debt.** In this sense a pawn or pledge is an intermediate between a simple lien and a mortgage which wholly passes the property in the thing conveyed. (See Halliday v. Holygate¹). **A contract to pawn a chattel even though money is advanced on the faith of it is not sufficient in itself to pass special property in the chattel to the pawnee. Delivery of the chattel pawned is a necessary element in the making of a pawn.***

But delivery and advance need not be simultaneous and a pledge may be perfected by delivery after the advance is made. Satisfaction of the debt or engagement extinguishes the pawn and the pawnee on such satisfaction is bound to redeliver the property. The pawner has an absolute right to redeem the property pledged upon tender of the amount advanced but that right would be lost if the pawnee has in the meantime lawfully sold the property pledged."

(emphasis supplied)

89. In **MAHARASHTRA STATE COOP. BANK LTD. vs PROVIDENT FUND COMMR., ([2009] 10 SCC 123)**, it has been held that the pledgee's interest is greater than mere lien. If the subsequent pledge was validly created, the pledgee will ordinarily have priority over a creditor who holds only a personal guarantee and an unsecured negative covenant. The guarantor cannot ordinarily rely on the earlier personal guarantee to invalidate the pledge or deprive the pledgee of the rights in specifically pledged assets. The relevant paragraphs read as under:

"47. In Law of Personal Property by Ray Andrews Brown (2nd Edn., 1936), the term "pledge" has been described in the following words:

"A pledge is a bailment of personal property to secure an obligation of the bailor. If the purpose of the transaction is to transfer property for security only, then the courts will hold the transaction a pledge, even though in form it may be a sale or other out-and-out transfer."

48. In Mulla's treatise on Transfer of Property Act, the following description has been given to the term "pledge":

"A pledge is a bailment of movable property by way of security. Possession is given and the transaction involves a transfer of special property in the subject of the security. A pawnee has no right of foreclosure since he never had absolute ownership at law and his equitable title cannot exceed what is specifically granted by law. In a pledge the pledgee is in possession of and has a special property in the goods which he is entitled to detain to secure repayment."

49. Under the common law a pawn or a pledge is a bailment of personal property as a security for some debt or engagement. A pawner is one who being liable to an engagement gives to the person to whom he is liable a thing to be held as security for payment of his debt or the fulfilment of his liability. The two ingredients of a pawn or a pledge are:

(1) that it is essential to the contract of pawn that the property pledged should be actually or constructively delivered to the pawnee; and

(2) a pawnee has only a special property in the pledge but the general property therein remains in the pawner and wholly reverts to him on discharge of the debt.

A pawn therefore is a security, where, by contract a deposit of goods is made as security for a debt. The right to property vests in the pledgee only so far as is necessary to secure the debt. In this sense a pawn or pledge is an intermediate between a simple lien and a mortgage which wholly passes the property in the thing conveyed.

52. In *Bank of Bihar v. State of Bihar* [(1972) 3 SCC 196] this Court considered the question whether the Cane Commissioner, who was an unsecured creditor of the sugar mill named Jagdishpur Zamindari Company Ltd. and did not have any right of priority over other creditors and in particular the secured creditors of the company, could seize and sell the sugar which was already pledged with the appellant bank as security for the advances made by it to the company. The appellant bank sued the State of Bihar and others including the Cane Commissioner and the company for return of 1818 bags of 27-D quality of sugar and, in the alternative, for recovery of Rs 1,81,700.93 with interest by way of damages for illegal removal and detention of sugar or price thereof. The trial court decreed the suit. It held that even though the order of seizure of the stock of sugar was valid, the plaintiff's right as pledgee could not be extinguished by such seizure.

53. The High Court allowed the appeal filed by the State of Bihar and others and held that the plaintiff bank had not been wrongfully deprived of the sugar. In para 4 of the judgment, this Court noted that the Cane Commissioner did not have any right of priority over the other creditors of the company and, in particular, the secured creditors and reversed the judgment of the High Court by recording the following observations: (*Bank of Bihar* case [(1972) 3 SCC 196] , SCC p. 200, paras 6-7)

"6. ... **The pawnee has special property and a lien which is not of ordinary nature on the goods and so long as his claim is not satisfied no other creditor of the pawnor has any right to take away the goods or its price.** After the goods had been seized by the Government it was bound to pay the amount due to the plaintiff and the balance could have been made available to satisfy the claim of other creditors of the

pawnor. But by a mere act of lawful seizure the Government could not deprive the plaintiff of the amount which was secured by the pledge of the goods to it. As the act of the Government resulted in deprivation of the amount to which the plaintiff was entitled it was bound to reimburse the plaintiff for such amount which the plaintiff in ordinary course would have realised by sale of the goods pledged with it on the pawnor making a default in payment of debt.

7. The approach of the trial court was unexceptionable. The plaintiff's right as a pawnee could not be extinguished by the seizure of the goods in its possession inasmuch as the pledge of the goods was not meant to replace the liability under the cash credit agreement. It was intended to give the plaintiff a primary right to sell the goods in satisfaction of the liability of the pawnor. The Cane Commissioner who was an unsecured creditor could not have any higher rights than the pawnor and was entitled only to the surplus money after satisfaction of the plaintiff's dues.'''

(emphasis supplied)

90. Thus, we hold that the Share Pledge Agreement dated 29.07.2013 executed by Dr. Vijay Mallya and Mr. Sidhartha Mallya over the UBL shares would have priority over the Consortium of Banks as they held only a Personal Guarantee and an unsecured negative covenant.

Re: Issue (iv):

91. It is said that an oral undertaking was given on 26.07.2013 by the Counsel for Dr. Vijay Mallya before the DRT in O.A.No.766/2013, which was not recorded in the order by the DRT. The question is whether an undertaking not recorded in the order by the DRT would have overriding effect on the Facility Agreement dated 26.07.2013 and the Share Pledge Agreement dated 29.07.2013.

92. An oral undertaking which was not recorded in the Court's order will not by itself nullify the pledge subsequently created. The existence of an undertaking must be established by clear material. In **BABU RAM GUPTA vs SUDHIR BHASIN ([1980] 3 SCC 47)**, the Supreme Court held that an undertaking must be expressly stated by the party and recorded by the Court or be clearly incorporated in the order. The relevant paragraph of the said decision reads as under:-

*"7. Coming to the first point, the contention of Mr Asthana was that there was no undertaking given by the appellant to the Court at all. Our attention has not been drawn by Counsel for the respondent to any application or affidavit filed by the appellant which contains an undertaking given by the appellant to hand over possession to the receiver appointed by the High Court by virtue of the impugned order. **It is manifest that any person appearing before the Court can give an undertaking in two ways: (1) that he files an application or an affidavit clearly setting out the undertaking given by***

him to Court, or (2) by a clear and express oral undertaking given by the contemner and incorporated by the Court in its order. If any of these conditions are satisfied then a wilful breach of the undertaking would doubtless amount to an offence under the Act. Although the High Court observed that the consent order extracted above had been passed on the basis of various undertakings given by the contemner, we are unable to find any material on record which contains such undertakings..."

(emphasis supplied)

93. Even otherwise, if Dr. Vijay Mallya, in violation of the undertaking, executed the Share Pledge Agreement on 29.07.2013, he may be held liable, but that itself will not nullify the validly created pledge where there is no proof or allegation that SCB, Dr. Vijay Mallya, Mr. Sidhartha Mallya and the petitioner in collusion, to defeat the undertaking, had executed the Facility Agreement, Share Pledge Agreement and Backstop Guarantee Agreement. Therefore, the relevant question is whether there was a clear undertaking to the Court and not merely an oral assurance or a private promise, and whether the Court sanctioned a particular course of action on its faith, as held by the Supreme Court in **RAMA NARANG (5) vs RAMESH NARANG ([2009] 16 SCC 126)**.

94. Even where a valid undertaking or injunction exists, it does not automatically render a subsequent pledge void or extinguishes the pledgee's right. The consequence is ordinarily enforcement of undertaking, contempt proceedings or appropriate relief in the proceedings in which the undertaking was given. The breach of undertaking may expose the person to contempt or other sanction, but the subsequent transaction is not thereby automatically void.

95. A mere undertaking does not by itself create or extinguish a proprietary charge or interest in the property. The legal effect of proprietary right must arise from applicable security instrument, transfer, registration, delivery, pledge etc., as held in **HARYANA FINANCIAL CORPN. vs GURCHARAN SINGH AND ANOTHER ([2014] 16 SCC 722)** as follows:

*"13. So far as the present case is concerned, no registered mortgage deed was executed by the first respondent and no title deed of the property was handed over by the first respondent to the Corporation. **The mere undertaking that a person would not dispose of the properties mentioned, during the currency of the loan, would not confer any charge on the immovable properties mentioned therein. In other words, a mere undertaking to create a mortgage is not sufficient to create an interest in any immovable property.** This legal position has been settled by various judgments of this Court.*

14. In *K. Muthuswami Gounder [K. Muthuswami Gounder v. N. Palaniappa Gounder, (1998) 7 SCC 327]* this Court was dealing with the legal validity of a security bond by which parties undertook that they would not alienate the properties till the decree was discharged. Referring the said document, this Court held as follows: (SCC p. 335, para 17)

"17. The document, Ext. A-6, security bond does not in substance offer suit property by way of security. Even giving the most liberal construction to the document, we cannot say that a charge as such has been created in respect of the suit property for money to be decreed in the suit. All that it states is that in the event of a decree being passed not to alienate the property till the decree is discharged, which is a mere undertaking without creating a charge. Therefore, we agree with the finding of the High Court that the document at Ext. A-6 is not a charge. If that is so, the suit filed by the appellant has got to be dismissed."

The Court held that the decree obtained in that suit was a simple money decree and not a decree on a charge or mortgage with the result that the appellant who purchased the property in execution of that decree did not acquire the rights under the security bond.

15. In *Bank of India [Bank of India v. Abhay D. Narottam, (2005) 11 SCC 520]* this Court was examining the scope of undertaking made for creating an equitable charge over a flat in favour of the Bank. **This Court held that without a transfer of interest, there is no question of there being a mortgage and that mere undertaking is not sufficient to create a charge.** The ratio laid down by the abovementioned judgment applies to the present case. **In our view, the mere undertaking that the party will not dispose of the properties mentioned in an undertaking, during the currency of the loan, will not create any**

charge over those properties, unless charge is created by deposit of title deeds or through a registered document. *We also hold that even if the purpose of the decree obtained in Civil Suit No. 767 of 1995 between the respondents was fraudulent and collusive one so as to defeat the undertaking made on 5-3-1994, that would not confer any charge over the properties, unless the undertaking is registered. We, therefore, find no error in the judgment of the lower appellate court which was affirmed by the High Court."*

(emphasis supplied)

96. An unrecorded oral undertaking is difficult to enforce as an undertaking to the Court unless clear evidence proves that it was actually given to, accepted by and relied on by the Court. as held by the Supreme Court in **BABU RAM GUPTA** (*supra*). In fact, this Court in W.P.No.38870/2013 and W.P.Nos.39048-39052 and 39053/2013 passed an interim order of injunction dated 03.09.2013 against Kingfisher Airlines, UBL and Dr. Vijay Mallya restraining them from transferring, alienating, disposing or creating third-party rights in respect of movable as well as immovable properties belonging to them. However, before the interim order was passed, the Facility Agreement, Share Pledge Agreement and Backstop Guarantee Agreement were already executed. Therefore, we are of the view that the oral undertaking will not override or nullify the effect of the Facility

Agreement, Share Pledge Agreement and Backstop Guarantee Agreement.

Re. Issue (v):

97. Mr. Sidhartha Mallya was not a party to the MDRA. He had not given any Personal Guarantee in pursuance to Clause 5(ii)(g)(2) of the Personal Guarantee dated 26.07.2013. 1,04,64,288 UBL shares were jointly held by Dr. Vijay Mallya and Mr. Sidhartha Mallya. A co-owner cannot, merely by giving a personal guarantee, create a charge over the joint property or over the shares of the co-owner. His guarantee creates a personal obligation to the lender and it does not by itself create a proprietary security interest in the joint assets. A surety's liability is immediate and co-extensive with that of the principal debtor, but this concerns personal liability and is enforceable against the surety and not creation of a charge over the property as held in **SBI vs. INDEXPORT REGISTERED ([1992] 3 SCC 159)** and **BANK OF BIHAR LTD. vs DR. DAMODAR PRASAD (AIR 1969 SC 297)**. A co-owner, subject to the applicable law and the terms of the instrument, can create security over his own undivided share or interest in the joint property. He cannot create security in respect of the assets jointly held without the express consent of the joint

owner. The relevant paragraphs of the said decision are as follows:

"13. In the present case before us the decree does not postpone the execution. The decree is simultaneous and it is jointly and severally against all the defendants including the guarantor. It is the right of the decree-holder to proceed with it in a way he likes. **Section 128 of the Indian Contract Act itself provides that "the liability of the surety is coextensive with that of the principal debtor, unless it is otherwise provided by the contract".**

14. **In Pollock & Mulla on Indian Contract and Specific Relief Act, Tenth Edition, at page 728 it is observed thus:**

"Coextensive.— Surety's liability is coextensive with that of the principal debtor.

A surety's liability to pay the debt is not removed by reason of the creditor's omission to sue the principal debtor. The creditor is not bound to exhaust his remedy against the principal before suing the surety, and a suit may be maintained against the surety though the principal has not been sued."

15. **In Chitty on Contracts, 24th Edition, Volume 2 at page 1031 paragraph 4831 it is stated as under:**

"Conditions precedent to surety.— Prima facie the surety may be proceeded against without demand against him, and without first proceeding against the principal debtor."

...

17. In *Hukumchand Insurance Co. Ltd. v. Bank of Baroda* [AIR 1977 Kant 204 : (1977) 2 Kant LJ 194 : ILR (1977) 2 Kant 980] a Division Bench of the High Court of Karnataka had an occasion to consider the question of liability of the surety vis-

a-vis the principal debtor. Venkatachaliah, J. (as His Lordship then was) observed:

"The question as to the liability of the surety, its extent and the manner of its enforcement have to be decided on first principles as to the nature and incidents of suretyship. The liability of a principal debtor and the liability of a surety which is coextensive with that of the former are really separate liabilities, although arising out of the same transaction. Notwithstanding the fact that they may stem from the same transaction, the two liabilities are distinct. The liability of the surety does not also, in all cases, arise simultaneously."

18. It will be noticed that the guarantor alone could have been sued, without even suing the principal debtor, so long as the creditor satisfies the court that the principal debtor is in default.

19. In Jagannath Ganeshram Agarwala v. Shivnarayan Bhagirath [AIR 1940 Bom 247 : 42 BLR 451 : 190 IC 73] a Division Bench of the Bombay High Court (Kania and Wassoodev, JJ.) held that the liability of the surety is coextensive, but is not in the alternative. Both the principal debtor and the surety are liable at the same time to the creditors."

(emphasis supplied)

We are, therefore, of the view that the Personal Guarantee of Dr. Vijay Mallya under the MDRA would not bind in any manner the 1,04,64,288 UBL shares jointly held by Dr. Vijay Mallya and Mr. Sidhartha Mallya.

Re. Issue (vi):

98. As stated by the Hon'ble Finance Minister on the floor of the Lok Sabha on 17.12.2024, the assets worth INR 14,131.6 crores, besides the UBL shares, have been restored from Dr. Vijay Mallya to the Consortium of Banks against their claim to an extent of INR 6,203 crores with interest. We are, therefore, of the view that when the Consortium of Banks' claim for their dues against the loan of INR 6,203 crores has got almost settled by making recovery of assets worth more than INR 14,131.6 crores, there would be no justification for their claim over the UBL shares. More than anything else, we are also of the view that it is Dr. Vijay Mallya's flamboyant lifestyle, excessive personal indulgence and his personal vanity are coming in the way of giving quietus to the claims of the Consortium of Banks against the loan of INR 6,203 crores advanced to the defunct Kingfisher Airlines Ltd. It is for the Consortium of Banks and the Government of India to give quietus to the proceedings when INR 14,131.6 crores worth of assets have been restored to the Consortium of Banks against their loan of INR 6,203 crores.

99. As submitted by Mr. Vikram Huilgol, learned Senior Counsel appearing for the Consortium of Banks, it was never

the case of the Consortium of Banks before the DRT that the petitioner was part of the Vijay Mallya Group and they never treated the petitioner's claim over the share with suspicion. The observation of the DRAT in this regard in the impugned order is contrary to the record and the case of the Consortium of Banks. The transactions between SCB and Watson, the petitioner, Dr. Vijay Mallya and Mr. Sidhartha Mallya are *bona fide* commercial transactions. The petitioner has received a Guarantee Fee of USD 5 million from SCB for providing the guarantee.

100. We, therefore, allow the writ petitions and set aside the impugned judgment and orders.

Pending IAs, if any, do not survive for consideration and accordingly, they stand disposed of.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(T.M.NADAF)
JUDGE

BKV
CT:SN