**REPORTABLE**

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL CONTEMPT JURISDICTION
CONTEMPT PETITION (CIVIL) No. 624 OF 2020
IN CIVIL APPEAL NO. 5158 OF 2016

HSBC PI Holdings (Mauritius) Limited ...Petitioner(s)

Versus

Pradeep Shantipershad Jain & Ors. ...Respondent(s)

**J U D G M E N T**

M.R. SHAH, J.

1. Present contempt petition has been preferred by the petitioner herein, alleging wilful, intentional and deliberate disobedience of the directions issued by this Court by the alleged contemnors – respondents herein in not depositing the shortfall amount so as to maintain a balance of USD 60 million in the Corporation Bank account maintained by Avitel Post Studioz Limited (hereinafter referred to as the "Avitel"), a company owned by the alleged contemnors. It is alleged that the alleged contemnors are in wilful breach of two orders of this Court dated 19.08.2020 and 06.05.2021.

2. The facts leading to the present contempt proceedings in a nutshell are as under: -

2.1 A Share Subscription Agreement (SSA) was entered into on 21.04.2011 between HSBC – petitioner herein and Avitel and others (original appellant(s) before this Court in Civil Appeal No. 5145/2016). HSBC made an investment in the equity capital of Avitel India for a consideration of USD 60 million in order to acquire 7.8% of its paid-up capital. That the said SSA contained an arbitration clause.

2.2 That thereafter, both the parties entered into a Shareholders Agreement (SHA) on 06.05.2011, which defined the relationship between the parties after SSA dated 21.04.2011 had been entered into. The said SHA also contained an arbitration clause. As disputes arose between the parties, on 11.05.2012, notices of arbitration were issued by HSBC to the Singapore International Arbitration Centre (SIAC) to commence arbitral proceedings. The SIAC appointed an Emergency Arbitrator. The Emergency Arbitrator passed two interim awards dated 28.05.2012 and 29.05.2012, in the SSA and SHA, respectively, in favour of HSBC, directing the alleged contemnors – Avitel Dubai to refrain from disposing of or

dealing with or diminishing the value of their assets up to USD 50 million, and permitting HSBC to deliver a copy of the interim awards to financial institutions in India and the UAE with which any of them hold or may hold or be signatory to accounts, together with a request that the financial institutions freeze such accounts consistent with the interim awards. On 27.07.2012, the Emergency Arbitrator made an amendment to interim awards granting further relief to HSBC. That thereafter on 30.07.2012, HSBC filed Arbitration Petition No. 1062/2012 under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act, 1996) in the Bombay High Court, inter-alia, seeking directions to call upon the alleged contemnors to deposit a security amount to the extent of HSBC's claim in the arbitration proceedings that had begun under both the SSA and SHA.

2.3 On 03.08.2012, the learned Single Judge of the Bombay High Court passed an interim order under Section 9 petition, inter-alia, directing the Corporation Bank to allow the alleged contemnors to withdraw a sum of INR 1 crore from their account on or before 09.08.2012, but not to

allow any further withdrawals until further orders, till which time, the account was to remain frozen. Meanwhile, the alleged contemnors challenged the jurisdiction of the three-member Arbitral Tribunal set up under the auspices of the SIAC. The Arbitral Tribunal on 07.12.2012 passed a unanimous "final partial award on jurisdiction", dismissing the jurisdictional challenge.

2.4 That thereafter in Section 9 petition pending before the Bombay High Court, the learned Single Judge passed an order dated 22.01.2014, in which the respondents herein – alleged contemnors were directed to deposit any shortfall in their account with the Corporation Bank so as to maintain a balance of USD 60 million. An appeal against the order of the learned Single Judge was disposed of by the Division Bench of the High Court vide judgment and order dated 31.07.2014. The order passed by the learned Single Judge directing the alleged contemnors to deposit the shortfall in their account with the Corporation Bank so as to maintain a balance of USD 60 million was the subject matter of further appeal before the Division Bench. By judgment and order dated 31.07.2014, the Division Bench of the High

Court partly allowed the said appeal and modified the order passed by the learned Single Judge and directed the alleged contemnors to deposit an additional amount equivalent to USD 20 million in the Corporation Bank account, so that the total deposit in the said account is maintained at half the said figure of USD 60 million, i.e., at USD 30 million (instead of USD 60 million as ordered by the learned Single Judge).

2.5 Feeling aggrieved and dissatisfied with order dated 31.07.2014 passed by the Division Bench of the High Court, both Avitel and HSBC preferred appeals before this Court. (being Civil Appeal No. 5145/2016 by Avitel and Civil Appeal No. 5158/2016 by HSBC). By a common judgment and order dated 19.08.2020, this Court set aside the order passed by the Division Bench of the High Court, directing the Avital to deposit USD 60 million and restored the order dated 22.01.2014 passed by the learned Single Judge. Thus, by the judgment and order dated 19.08.2020, the alleged contemnors – respondents herein – Avitel and others were required to deposit and/or maintain USD 60 million in the Corporation Bank account. It is alleged that

not depositing the shortfall amount and/or maintaining USD 60 million in the Corporation Bank account, the respondents herein have rendered themselves liable for suitable punishment under the Contempt of Courts Act.

2.6 At this stage, it is required to be noted that in the meanwhile the Arbitral Tribunal in Singapore had passed a final award dated 27.09.2014, awarding USD 60 million as damages in favour of the HSBC and against the respondents herein. The same foreign award was challenged by the respondents herein – alleged contemnors in Section 34 proceedings before the Bombay High Court. By a judgment and order dated 28.09.2015, the learned Single Judge dismissed Section 34 application/proceedings and an appeal under Section 37 of the Act, 1996 also came to be dismissed on 05.05.2017. Meanwhile, HSBC had moved the Bombay High Court to enforce the foreign final award dated 27.09.2014 in the SSA, of which enforcement proceedings were reported to be pending.

2.7 It appears that thereafter and pursuant to the judgment and order dated 19.08.2020 passed by this Court, the HSBC addressed a legal notice dated 04.09.2020 to the

alleged contemnors and Avitel, calling upon them to inter-alia deposit the shortfall amount in the Corporation Bank account to maintain a total of USD 60 million. The alleged contemnors replied to the said notice by their reply dated 09.09.2020 and refused to deposit the shortfall amount on the ground that they were contemplating remedies under Article 137 of the Constitution of India.

2.8 That thereafter, the petitioner had filed the present petition against the respondents herein on 26.09.2020, alleging wilful, intentional and deliberate disobedience of August Judgment. This Court issued notice in the contempt petition on 06.11.2020.

2.9 On 30.04.2021, HSBC filed an Interim Application bearing No. 59119/2021, inter-alia, seeking to restrain the alleged contemnors from diverting their assets and/or creating third party rights during the pendency of the contempt petition with a view to secure its interests.

2.10 At next hearing on 06.05.2021, the alleged contemnors volunteered to give an undertaking not to sell or encumber any of their and Avitel's assets during the pendency of this contempt petition as well as the enforcement petition

pending before the Bombay High Court. The same proposal was rejected by this Court. This Court further directed the respondents herein - alleged contemnors to deposit the shortfall amount within a period of six weeks (i.e., by June, 2021).

2.11 That thereafter instead of complying with the directions of this Court, on 15.06.2021 the respondents filed an IA seeking exemption from the payment of the shortfall amount, inter-alia, on the ground that they are unable to liquidate their assets and offered the same undertaking, which was earlier rejected by this Court on 06.05.2021 (IA No. 68388/2021). The said exemption application was opposed by HSBC vide their reply dated 01.07.2021. This Court dismissed the exemption application vide order dated 02.07.2021 and directed the alleged contemnors to file their counter affidavit to the contempt petition in two weeks. It is the case on behalf of HSBC that instead of complying with the judgment and order dated 19.08.2020 and subsequent order dated 06.05.2021, the alleged contemnors have filed another application being I.A. No.

82521/2021 (application for directions) raising the same grounds that were earlier rejected by this Court.

2.12 As the respondents herein – alleged contemnors have failed to comply with the order passed by the learned Single Judge and the judgment and order passed by this Court dated 19.08.2020 and subsequent order dated 06.05.2021 in not depositing the shortfall of approx. USD 42 million (approx. INR 3,09,07,88,400 as on 18.09.2020), so as to maintain a sum of at least USD 60 million (approx. 4,41,54,12,000 as on 18.09.2020) in the Corporation Bank account, the petitioner herein – HSBC has preferred the present contempt petition.

3. Shri Neeraj Kishan Kaul, learned Senior Advocate has appeared on behalf of the petitioner – HSBC and Shri Mukul Rohatgi, learned Senior Advocate has appeared on behalf of the respondents – alleged contemnors. A counter is filed on behalf of the respondents – alleged contemnors.

4. Shri Neeraj Kishan Kaul, learned Senior Advocate appearing on behalf of the petitioner – HSBC has vehemently submitted that there is wilful, intentional and deliberate disobedience of judgment and order dated

19.08.2020 and subsequent order dated 06.05.2021 by the respondents herein by not depositing the shortfall amount to a sum of USD 60 million in the Corporation Bank account maintained by the Avitel. It is submitted that the wilful, intentional and deliberate disobedience of orders passed by this Court has rendered the respondents – alleged contemnors liable for suitable punishment under the provisions of the Contempt of Courts Act.

4.1 It is further submitted by Shri Kaul, learned Senior Advocate appearing on behalf of the petitioner – HSBC that in the present case after judgment and order dated 19.08.2020 passed by this Court confirming the order passed by the learned Single Judge, directing the Avital and others to deposit the shortfall amount so as to maintain a sum of USD 60 million in the Corporation Bank account maintained by the Avitel, the respondents and the Avitel have filed number of proceedings on the same grounds which were rejected by this Hon'ble Court time and again. It is submitted that the respondents and the Avitel have continued to file number of proceedings on the same

grounds which were earlier not accepted by this Hon'ble Court.

4.2 It is submitted that the respondents – alleged contemnors have siphoned off USD 60 million invested by the petitioner in Avitel to related parties. It is submitted that the monies were siphoned off by the respondents – alleged contemnors to Avitel Post Studioz FZ-LLC (Avitel Dubai) through Avitel Holdings Limited (Avitel Mauritius). These amounts were thereafter paid to Highend, Digital Fusion, etc. i.e., to companies owned by alleged contemnors. It is submitted that out of the total amount invested by the petitioner i.e., USD 59.2 million have been transferred to Avitel Dubai's bank accounts and into the bank accounts, the majority of which are controlled by the Jain Family. It is submitted that the same has been upheld by the arbitral tribunal in the Foreign Final Award and prima facie accepted by this Hon'ble Court in the August Judgment.

4.3 It is submitted that the respondents – alleged contemnors did not challenge the final arbitral award in Singapore. However, they filed a petition under Section 34 of the Act, 1996 before the Bombay High Court, which has been

dismissed on 28.09.2015. It is submitted that the Division Bench of the Bombay High Court has confirmed the order passed by the learned Single Judge dated 28.09.2015 rejecting Section 34 application. It is submitted that the Foreign Final Award has not been challenged in Singapore, the findings made therein are final and binding on the alleged contemnors.

4.4 It is submitted that despite the petitioner served a legal notice to the respondents – alleged contemnors and Avitel, which was after and pursuant to the August Judgment delivered by this Hon'ble Court, calling upon them to inter-alia, deposit the shortfall amount in the Corporation Bank account to maintain a total of USD 60 million, the respondents – alleged contemnors have refused to deposit the shortfall amount at that time on the ground that they were contemplating the proceedings under Article 137 of the Constitution of India. It is submitted that therefore and after this Hon'ble Court issued the notice in the present contempt petition, this Hon'ble Court passed an order dated 06.05.2021 directing respondents – alleged contemnors to deposit the shortfall amount within a period of six weeks. It

is submitted that instead of depositing the shortfall amount which expired on 17.06.2021, the respondents – alleged contemnors filed an IA seeking exemption from the payment of the shortfall amount which came to be dismissed by this Hon'ble Court. It is submitted that the offer made by the respondents to file an undertaking that they will not dispose of their assets in place of making deposit of the shortfall amount, has not been accepted and/or the said proposal has been rejected by this Hon'ble Court.

4.5 It is further submitted that the case on behalf of the respondents – alleged contemnors that they are unable to arrange and liquidate their assets is nothing but a false attempt on the part of the respondents not to deposit the shortfall amount. It is submitted that their inability to liquidate their assets and/or their inability to deposit the requisite amount is nothing but a lame excuse which as such is belated. It is submitted that though the August Judgment was pronounced over ten months ago, the respondents – alleged contemnors did not notify their inability to deposit the amount until they made their exemption application.

4.6 It is submitted that in reply to the exemption application – IA No. 68388/2011, it was specifically pointed out by the petitioner – HSBC that if respondents – alleged contemnors – Avitel are granted the reliefs prayed for in the application (exemption from making payment of the shortfall amount) the August judgment, contempt petition, order dated 06.05.2021 and consequently, the enforcement proceedings before the Bombay High Court, would be rendered infructuous. It is submitted that thereafter, after hearing learned counsel appearing on behalf of both the parties by order dated 02.07.2021 this Hon'ble Court had dismissed the exemption application and directed the respondents to file their counter affidavit to the contempt petition in two weeks. It is submitted that however, thereafter and in continuous of its contemptuous conduct the respondents – alleged contemnors filed yet another IA No. 82521/2021 (application for directions) raising the same grounds that were rejected by this Hon'ble Court.

4.7 It is submitted that on 16.07.2021, respondents – alleged contemnors also filed their counter affidavit, inter-alia,

stating that they are in the process of collecting offers in respect of their immovable and movable assets including their shareholding in Avitel to arrange the shortfall amount and have filed a review petition (Diary No. 20098/2020) against the August Judgment which is pending before the Supreme Court. It is submitted that all grounds raised by the respondents – alleged contemnors in the counter affidavit have already been rejected by this Hon'ble Court in this contempt petition itself. It is submitted that therefore, the respondents – alleged contemnors are seeking to reagitate the same issue again is abuse of process of the Court, as held by this Hon'ble Court in the case of **KK Modi Vs. KN Modi and Ors.; (1998) 3 SCC 573.**

4.8 It is further submitted by Shri Kaul, learned Senior Advocate appearing on behalf of the petitioner – HSBC that as such the respondents have accepted that are duty bound to comply with the directions of this Hon'ble Court and order dated 06.05.2021. It is submitted that as such the respondents have not raised the issue of maintainability of the contempt petition.

4.9 It is submitted that while the alleged contemnors in the counter affidavit state that they have been "in the process of collecting offers" and "actively pursuing sale of their personal assets", the alleged advertisements put up for sale of such assets have been published as late as on 8th July, 2021 (i.e. one week before the filing of counter affidavit and almost 11 months after the August Judgment and subsequent to the order rejecting the exemption application on 02.07.2021), which is nothing but an attempt to create an illusion of their attempts for compliance.

4.10 It is submitted that the list of assets provided by the alleged contemnors is untrustworthy and may not be relied upon on the grounds that: -

(i) The list of assets submitted by alleged contemnors is not verified / audited by neither any Chartered Accountant nor the income tax returns of the Alleged Contemnors;

(ii) Does not contain a list of liabilities. Fails to disclose whether there are existing encumbrances on any of the assets disclosed;

(iii) The assets disclosed by the alleged contemnors only amount to Rs 16.37 Crore (approx.). If permitted to dispose assets, then in the best-case scenario only 16 Crores would be deposited;

(iv) The basis for the valuation of fixed assets is not clear nor credible. For instance, the cost of depreciable items such as computers, furniture, etc. has been maintained at the same price since 2014. Such assets would obviously depreciate with time and lead to decrease in value;

(v) No independent valuation of Avitel or the Alleged Contemnors share in Avitel has been provided. The same is merely an eyewash;

(vi) The value of petitioner's investment of USD 60 Million in Avitel was held to be nil in the Final Foreign Award. Therefore, the net worth of Avitel and what actual amount would be realizable from the sale of shares of Avitel remains uncertain;

(vii) Avitel holding shares worth Rs. 274 Crore in a subsidiary, Avitel Mauritius is also completely unreliable and misleading. The underlying value of

Avitel Mauritius arose only from the transfer of USD 60 Million that the Petitioners had invested in Avitel or in any event is not supported by any credible proof. No independent valuation report of Avitel Mauritius has been provided to lend credence to the value of the company;

(viii) In light of findings of the arbitral tribunal and the Supreme Court in August Judgment that the petitioner's investment of USD 60 Million was diverted to entities related to the alleged contemnors; the list of assets owned by the alleged contemnors and Avitel are even less reliable.

4.11 It is further submitted by Shri Kaul, learned Senior Advocate appearing on behalf of the respondents that as such they have not raised the issue of maintainability of the contempt petition either in its counter or the two applications filed earlier. It is submitted that therefore, the belated submissions challenging the maintainability of the present contempt petition deserves to be dismissed on this ground alone. It is submitted that even the Supreme Court

has jurisdiction under Article 129 of the Constitution of India to punish any person for contempt of its orders.

4.12 It is submitted that the submissions on behalf of the alleged contemnors that the contempt petition cannot lie as the petitioner can execute the August judgment passed under Section 9 of the Act, 1996 under the Code of Civil procedure, 1908 is misconceived, tenuous and unsustainable in law. It is submitted that as such in addition the respondents – alleged contemnors have further wilfully disobeyed order dated 06.05.2021 passed by this Hon'ble Court.

4.13 It is submitted that this Hon'ble Court in the case of **Firm Ashok Traders Vs Gurumukh Das Saluja (2004) 3 SCC 155** has held that an application under Section 9 is not a suit and the order passed under Section 9 would fall within the expression "interim measure of protection" as opposed to all time or permanent protection. The purpose of Section 9 is to provide expedited interim relief in support of arbitration and safeguard the subject matter of the dispute so that irreparable loss would not cause. It is submitted

that an execution application is to be filed for a default of Section 9 Order, then the whole purpose of Section 9 of Arbitration Act to get expeditious interim protection would be defeated. It is submitted that Section 9 proceedings are interim proceedings in nature.

4.14 It is further submitted that the purpose behind contempt is to bring violation of Court Orders to the notice of the Court and therefore Contempt is a matter between the court and the person in contempt of court. In contrast, the purpose behind execution proceedings is to enjoy the fruits of the decree in his favour. It is submitted that in the present case, the Hon'ble Court has directed the alleged contemnors to deposit the shortfall amount in the bank account owned by Avitel India as an interim relief for subject matter of the dispute and not make any payment to the petitioner that would warrant execution proceedings. It is submitted that the contempt proceedings and execution proceedings are two separate remedies that can be invoked simultaneously. Reliance is placed upon the decision of this Court in the case of **Delhi Development Authority Vs. Skipper Construction CO. (P) Ltd.; (1996) 4 SCC 622** as well as

the decision of the Bombay High Court in the case of **Rajinder Kumar Malhotra Vs. Paresh Biharilal Vyas; 2016 SCC Online Bom 89**. It is submitted that in any event the violation of order dated 06.05.2021 in this contempt petition is also in itself contempt of court.

4.15 It is further submitted that it is a settled position of law that merely because an order or decree of a court is executable, the same would not take away the court's jurisdiction in contempt proceedings. Reliance is placed on the decision of this Court in the case of **Rama Narang Vs. Ramesh Narang and Anr.; (2006) 11 SCC 114**.

4.16 It is submitted that in order to constitute, the order of the court must be of such a nature which is capable of execution by the person charged in normal circumstances.

4.17 It is submitted that as observed and held by the Delhi High Court in the case of **M/s Terra Manufacturing & Sales Vs. M/s Alagendiraa Apparels 2011 SCC Online Del 4458**, once an order passed under Section 9 of the Arbitration Act is wilfully violated, the person is liable for contempt.

4.18 It is submitted that the power of Court to punish for contempt is wide and the recognized. A party in breach of any order of court whether interlocutory or final is subject to being proceeded against in contempt. It is submitted that as observed and held by this Hon'ble Court in the case of **Welset Engineers & Anr. Vs. Vikas Auto Industries & Ors.; (2015) 10 SCC 609** and in the case of **SEBI Vs. Sahara India Real Estate Corp. Ltd. & Ors.; (2014) 5 SCC 429**, non-compliance with the orders passed by the Hon'ble Supreme Court shakes the foundation of judicial system and undermines rule of law.

4.19 Now so far as the submissions on behalf of the respondents – alleged contemnors that as the August Judgment did not provide a timeline for depositing the shortfall amount and therefore, the alleged contemnors – respondents cannot be held to be in contempt of the orders of this Hon'ble Court, it is submitted that the same is incorrect in facts and in law. It is submitted that the August Judgment required the alleged contemnors and Avitel to deposit the shortfall amount in Corporation Bank account as an interim relief

and in the manner suggested by the learned Single Judge passed by the High Court i.e., within four weeks. Reliance is placed upon the decision of this Court in the case of **Kunhayammed Vs. State of Kerala; (2000) 6 SCC 359**. It is submitted that therefore, when this Hon'ble Court confirmed the order passed by the learned Single Judge, the respondents – alleged contemnors were required to deposit the shortfall amount in their owned Corporation Bank account at least within a period of four weeks from 19.08.2020. It is submitted that as such the respondents have been given many opportunities and ample time to comply with the August Judgment. They continue to be in contempt of order dated 06.05.2021 for deposit in these contempt proceedings, where an additional six weeks were provided to them for deposit. It is submitted that inordinate delay in complying with the orders of the Court, non-obedience by a passive and dormant conduct has been held to be a contempt of court by this Hon'ble Court in the case of **Maninderjit Singh Bitta Vs. Union of India; (2012) 1 SCC 273**.

4.20 It is submitted that compliance of an order/judgment was never contingent on the non-availability of "liquid funds" of the alleged contemnors. It is submitted that an order for depositing the money cannot be made contingent upon the funds available to the alleged contemnors. They cannot contend that they will comply with the August Judgment only when their assets are allowed to be sold.

4.21 It is submitted that non-availability of liquid funds/assets is yet another deliberate tactic of the alleged contemnors that is intended to deceive not only the petitioner but also this Hon'ble Court. Given the findings by this Hon'ble Court and the SIAC that the alleged contemnors are guilty of siphoning off funds to their families, the assets of their families are not disclosed. The list of assets indicates that even if the alleged contemnors are allowed to sell their assets; the same would not fetch any substantial amount to match USD 60 Million, as under:

(i) The total value of the assets of the alleged contemnors is approximately Rs. 16 crores;

(ii) Alleged contemnors have submitted that Avitel has assets worth approx. Rs. 365 crores;

(iii) Out of Rs. 365 crores, Rs. 84 crores approximately are the monies lying in the Corporation Bank account Rs. 247 crores, is the value of investment of Avitel in the form of shares in Avitel Mauritius.

(iv) The submissions of alleged contemnors that Avitel holds shares worth Rs. 274 Crore in a subsidiary called Avitel Mauritius is also completely unreliable and misleading. The underlying value of Avitel Mauritius arose only from the transfer of USD 60 Million that the petitioners had invested in Avitel or in any event is not supported by any credible proof. The valuation of Avitel Mauritius is unreliable and no independent valuation report of Avitel Mauritius has been provided to lend credence to the value of the company.

(v) The Foreign Final Award held that the value of investment made by petitioner in Avitel was nil.

It is submitted that in light of the same it is uncertain what is the actual value of Avitel and what actual amount would be realizable from the sale of shares of Avitel. No independent valuation of Avitel or the alleged contemnors'

share in Avitel has been provided. The same is merely an eyewash.

4.22 It is further submitted that mere pendency of a review petition cannot be a ground for non-compliance of judgment/ order of this Hon'ble Court. It is submitted that the respondents - alleged contemnors and Avitel have a history of non-compliance of the orders of judicial authorities including the orders of the Arbitral Tribunal. It is submitted that the review petition has been filed only to delay the compliance of the August Judgment/order. It is submitted that although the review petition was filed in month of September 2020, which has been into in defects at the Registry due to want of procedural compliances. Such one-year delay in curing the defects is a deliberate attempt to await (i) the retirement of the Judge who rendered the August Judgment, and (ii) rely on the mere filing of the review petition to argue against depositing of the amounts. It is submitted that as this Hon'ble Court has held that such tactics in delaying the filing of the review petition must be disapproved. Reliance is placed on the decision of this Court in the case of **Vedanta Ltd. (formerly**

**known as M/s. Sesa Sterlite Ltd) Vs. Goa Foundation and Ors.; 2021 SCC Online SC 476**.

4.23 It is submitted that the judgments of this Hon'ble Court relied upon on behalf of the respondents – alleged contemnors shall not be applicable to the facts of the case on hand as the present case is of compliance of the order passed in Section 9 application of the Act, 1996 and the subsequent specific directions issued by this Hon'ble Court in the contempt proceedings in order dated 06.05.2021.

4.24 Making the above submissions, it is vehemently submitted by Shri Kaul, learned Senior Advocate appearing on behalf of the petitioner – HSBC that the respondents – alleged contemnors have shown highest form of wilful disobedience and contemptuous action and therefore, they may be punished under the Contempt of Courts Act and they may be sentenced to civil imprisonment at least unless and until they have purged the contempt by full compliance of the August Judgment. It is submitted that the petitioner has suffered irreparable loss due to the fraudulent conduct of Avitel and alleged contemnors and in light of the same; the petitioner's petition for enforcement of Foreign Award before

the Bombay High Court may be expedited by this Hon'ble Court; it is submitted that the respondents have sought to employ dilatory tactics at every stage and therefore, any further delay will continue to cause prejudice to the petitioner. It is submitted that such delay would also discourage foreign investors like the petitioner who has been waiting to enjoy fruits of the Foreign Final Award passed in its favour since 2014 and seeks to safeguard the subject matter of its dispute as directed in the August Judgment under Section 9 of the Act, 1996.

5. Present contempt proceedings are vehemently opposed by Shri Mukul Rohatgi, learned Senior Advocate appearing on behalf of the contesting respondents – alleged contemnors.

5.1 It is submitted that the present proceedings have been initiated by the petitioner – HSBC alleging non-compliance of order dated 22.01.2014 passed by the learned Single Judge in Arbitration Petition No. 1062/2012 by which the respondents are directed to deposit USD 60 million. It is submitted that the order passed by the learned Single Judge has been confirmed by this Hon'ble Court by judgment and order dated 19.08.2020 in Civil Appeal No.

5158/2016. It is submitted that as such a review application being R.P. Diary No. 20098/2020 has been filed by Avitel India requesting to recall/review the aforesaid judgment and order dated 19.08.2020. It is submitted that the said review application is pending for consideration by this Hon'ble Court.

5.2 It is submitted that in just about 37 days of the August Judgment, the present contempt petition has been filed by the HSBC before this Hon'ble Court on 26.09.2020 on expiry of three weeks' time granted by HSBC. It is submitted on 30.04.2021, HSBC filed I.A. No. 59119/2021 for interim reliefs before this Hon'ble Court to direct the respondents herein to restrain them from selling, alienating, encumbering, creating third party rights, transferring or diverting their movable and immovable assets during the pendency of the present contempt petition. It is submitted that the same application is pending adjudication before this Hon'ble Court.

5.3 It is submitted that the respondents have also filed one I.A. No. 82521/2021 seeking the permission of this Hon'ble Court to sell and/or encumber their assets and also the

assets of the company, to arrange the requisite shortfall amount to deposit the same in the bank account of the company maintained with the Corporation Bank. It is submitted that therefore the petitioner herein is taking contradictory stands in as much as on one hand the petitioner is seeking appointment of receiver on the assets of the respondents before the Bombay High Court and filing an application to restrict the respondents from disposing of its assets, but on the other hand the petitioner is using contempt jurisdiction to seek enforcement of the judgment of the learned Single Judge of the Bombay High Court for deposit of the shortfall amount in the Corporation Bank account. It is submitted that at present the respondent has not taken any measures to dispose of any assets and the respondent is currently only assessing the value of the assets owned in the name of the company and its directors and will only sell/encumber their assets with due permission of this Hon'ble Court, to comply with the direction to deposit the shortfall amount in the Corporation Bank account. It is submitted that therefore

while considering the present contempt proceedings the aforesaid aspects may be taken into consideration.

5.4 Shri Rohatgi, learned Senior Advocate appearing on behalf of the respondents – alleged contemnors has further submitted that the present contempt petition is not maintainable before this Hon'ble Court on the grounds, inter-alia, (i) by way of the present proceedings in contempt, the petitioner is seeking to execute the order of the learned Single Judge dated 22.01.2014 in Arbitration Petition No. 1062/2012, which is executable before appropriate court/forum; (ii) the contempt proceedings cannot substitute the execution/enforcement proceedings (already being availed by the petitioner) and as such the present contempt proceedings are misconceived in law and facts. In support of above submissions, Shri Rohatgi, learned Senior Advocate has relied upon the decisions of this Court in the cases of **Food Corpn. of India Vs. Sukh Deo Prasad; (2009) 5 SCC 665 (para 31)** and **R.N. Dey Vs. Bhagyabati Pramanik; (2000) 4 SCC 400 (para 7)** as

well as in the case of **Court Liquidator Employees' Assn. Vs. P.G. Mankad; (2002) 10 SCC 477.**

5.5 It is submitted that in the present case also, this Hon'ble Court by the August Judgment has allowed the appeal of the petitioner herein and upheld the order of the learned Single Judge therefore, as such, the appropriate remedy for the petitioner herein is to approach the High Court of Bombay for execution if warranted and not this Hon'ble Court.

5.6 It is submitted that so far as the decision of this Court in the case of **Kunhayammed** (supra) to elaborate the principle of merger particularly with respect to the maintainability of the present contempt petition, relied upon by the petitioner is concerned, the said decision shall not be applicable to the facts of the case on hand. It is submitted that the principle of merger as discussed and contemplated in the said decision was on a different footing and the same is evident from the conclusions set out in paragraph 44 of the said judgment.

5.7 It is further submitted by Shri Rohatgi, learned Senior Advocate appearing on behalf of the respondents that respondents herein never had and do not have any intention whatsoever to disobey the order passed by this Hon'ble Court. It is submitted that despite absolute willingness and best efforts, the respondents are helpless in complying with the directions of this Hon'ble Court for such reasons which are absolutely beyond their control and for want of adequate funds at this stage. It is submitted that there is no intent whatsoever to bring the authority and administration of law into disrespect or disregard or to interfere with or to undermine the authority of this Hon'ble Court or to cause any prejudice to the petitioner.

5.8 It is submitted that the respondents do not have immediate liquid funds to deposit the shortfall. Utmost and expeditious sincere efforts are being taken by the respondents herein to collect offers in respect of their immovable and movable assets including their shareholdings in the company to arrange for the requisite funds.

5.9 It is submitted that the respondents herein have also disclosed all the assets in the name of the company and the alleged contemnors herein before this Hon'ble Court and have also submitted to court auction of the said assets, if directed by this Hon'ble Court. It is submitted that an application being I.A. No. 82521/2021 praying for directions to sell and/or encumber their assets and also the assets of the company, to arrange the requisite shortfall amount to deposit the same in the bank account of the company maintained with the Corporation Bank is also pending before this Hon'ble Court.

5.10 It is submitted that the respondents have genuine inability and do not have the wherewithal to deposit the shortfall amount in the Corporation Bank despite their best intentions, unless they are permitted to sell/encumber their assets to generate further funds for depositing the shortfall amount in the Corporation Bank account.

5.11 It is further submitted that contempt proceedings can only be attracted when the lapse on the part of the parties is deliberate and with the intention to defy the authority of

the Court and there has to be wilful disobedience on the part of the party.

5.12 It is submitted that as held by this Hon'ble Court in catena of decisions mere non-compliance cannot be a ground to punish a person/judgment-debtor under the provisions of the Contempt of Courts Act.

5.13 It is submitted that in the present case, as such, the order of the learned Single Judge has not yet become a decree and enforcement of the arbitral award is still pending before the High Court. It is submitted that even if it is assumed that the order of the learned Single Judge has become a decree, Section 51 read with Order XXI Rule 40 of CPC lays down the guidelines for the execution of the same.

5.14 It is submitted that in the case of **Rama Narang Vs. Ramesh Narang and Ors.; (2021) SCC Online SC 29,** this Hon'ble Court has observed and held that for bringing an action for civil contempt, the petitioner has to satisfy the court that there has been a wilful disobedience of any judgment, decree, direction, order, writ or other process of the Court. Shri Rohatgi, learned Senior Advocate

appearing on behalf of the respondents has also relied upon the following decisions of this Court in the cases **Ram Kishan Vs. Tarun Bajaj; (2014) 16 SCC 204; Kanwar Singh Saini Vs. High Court of Delhi; (2012) 4 SCC 307** and **Kapildeo Prasad Sah Vs. State of Bihar; (1999) 7 SCC 569,** in support of his above submissions and in support of his request and prayer not to entertain the present contempt petition and relegate the petitioner to avail any other remedy which may be available to the petitioner to execute order dated 22.01.2014 passed by the learned Single Judge, which has been affirmed and confirmed by this Hon'ble Court vide judgment and order dated 19.08.2020 in Civil Appeal No. 5158/2016.

6. Heard. In the present contempt proceedings, the petitioner has alleged that the respondents herein – alleged contemnors have committed the contempt of court for wilful disobedience of two orders passed by this Court dated 19.08.2020 passed in Civil Appeal No. 5158/2016 and subsequent order dated 06.05.2021 passed in the present proceedings. At this stage, it is required to be noted

that in the present case the learned Single Judge passed an order as far as back on 22.01.2014 in a petition under Section 9 of the Act, 1996, directing the respondents herein – alleged contemnors to deposit the shortfall amount in their account with the Corporation Bank so as to maintain a balance of USD 60 million. The order passed by the learned Single Judge came to be modified by the Division Bench of the High Court and the alleged contemnors were directed to deposit an additional amount equivalent to USD 20 million in the Corporation Bank account, so that the total deposit in the said account is maintained at half the said figure of USD 60 million, i.e., at USD 30 million (instead of USD 60 million as ordered by the learned Single Judge). By detailed judgment and order dated 19.08.2020, this Court in Civil Appeal No. 5158/2016 has restored the order passed by the learned Single Judge dated 22.01.2014. Thus, the respondents herein – alleged contemnors are directed to deposit the shortfall in their account with the Corporation Bank so as to maintain a balance of USD 60 million. The said order has not been complied with till date and the respondents have failed to

maintain a balance of USD 60 million in their bank account with the Corporation Bank. At this stage, it is required to be noted that in the meanwhile the Arbitral Tribunal in Singapore had also passed a Final Award dated 27.09.2014 awarding USD 60 million as damages in favour of the HSBC – petitioner herein and against the respondents. The applications under Section 34 and 37 of the Act, 1996 against the Award passed by the Arbitral Tribunal in Singapore had been dismissed and the execution proceedings moved by the HSBC in the Bombay High Court to enforce Foreign Final Award dated 27.09.2014 are reported to be pending. By a notice dated 04.09.2020, the petitioner had served a legal notice upon the alleged contemnors – respondents and Avitel calling upon them to, inter-alia, deposit the shortfall amount in the Corporation Bank account to maintain a balance of USD 60 million. Despite the above, the respondents have failed to deposit and/or to maintain a balance of USD 60 million in their Corporation Bank account. That thereafter, the present contempt proceedings have been initiated/filed on 25.09.2020 alleging wilful, intentional and deliberate

disobedience of judgment and order passed by this Court dated 19.08.2020. This Court had issued a notice in the present contempt proceedings on 06.11.2020. That thereafter by a further order dated 06.05.2021 this Court had directed the respondents to deposit the shortfall amount within a period of six weeks in the Corporation Bank account as per prayer (b) of the present application. The prayer (b) which has been granted by this Court vide order dated 06.05.2021 is as under: -

> "b) direct the Alleged Contemnors to forthwith deposit the shortfall of appx. USD 42 million (appx. INR 3,09,07,88,400 as on 18.09.2020), so as to maintain a sum balance of at least USD 60 million (appx. INR 4,41,54,12,000 as on 18.09.2020) in the Corporation Bank account to ensure obedience of the judgment dated 19.08.2020 in Civil Appeal No. 5158 of 2016 passed by this Hon'ble Court;"

6.1 Thus, not only there is a final judgment and order dated 19.08.2020 passed by this Court in Civil Appeal No. 5158/2016 restoring the order passed by the learned Single Judge passed in an application under Section 9 of the Act, 1996 directing the respondents herein to maintain a balance of USD 60 million in their Corporation Bank account, there is further directions in terms of the prayer para (b) (reproduced hereinabove) vide order dated

06.05.2021. The subsequent direction dated 06.05.2021 has also not been complied with by the respondents. It is to be noted that after the direction/order dated 06.05.2021, instead of complying with the directions contained in order dated 06.05.2021, the respondents filed an I.A. seeking exemption from payment of shortfall amount being I.A. No. 68388/2021. While seeking exemption, it was the case on behalf of the respondents in I.A. No. 68388/2021 that despite their absolute willingness and best efforts, they are helpless in complying with the directions issued by this Court for such reasons which are absolutely beyond their control and for want of adequate funds at this stage. In paragraph 5 to 16, it was stated as under: -

> "5. At the outset, the Applicants most humbly state and submit that they have the utmost respect of this Hon'ble Court and are duty bound to comply with every order passed by this Hon'ble Court. The applicants herein never had and do not have any intention whatsoever to disobey the order passed by this Hon'ble Court. Despite their absolute willingness and best efforts, the applicants are helpless in complying with the directions of this Hon'ble Court for such reasons which are absolutely beyond their control and for want of adequate funds at this stage. There is no intent whatsoever to bring the authority and administration of law into disrespect or disregard or to interfere with or to undermine the authority of

this Hon'ble Court or to cause any prejudice to the petitioner.

6. The Applicants tender an unqualified and unconditional apology to this Hon'ble Court for being unable to implement and comply with the directions passed by this Hon'ble Court vide its order dated 06.05.2021 in the instant contempt petition.

7. The applicants submit that on 06.05.2011, the petitioner HSBC PI Holdings (Mauritius) Limited was allotted by the Company, total 614,327 Compulsorily Convertible Preference Shares on payment of nominal amount of Rs. 10 per share (total nominal amount paid= Rs. 61,43,270/-) and Premium amount of Rs. 4355.75 per share (total premium amount paid= Rs. 267,58,52, 260/-) and 1 Equity Share of nominal amount of Rs. I 0 per share (total nominal amount paid = Rs. I 0/-) and Premium amount of Rs. 4460/- per share (total premium amount paid = Rs. 4460/-), as evident from the Return of allotment filed in Form 2 under Section 75(1) of the Companies Act, 1956. A copy of the said Form 2 filed by the Company showing the details of the shares issued and the amounts paid towards the same, is hereto annexed and marked as Annexure A-2. (Page No. 13 to 19). Thus, a total amount of Rs. 268,20,00,000/- (Rupees Two Hundred Sixty Eight Crores Twenty Lakhs - equivalent to USD 60 Million) was invested in shares of the Company by the petitioner HSBC.

8. The applicants herein submit that presently an aggregate amount of Rs. 84,10,65,140/- (Rupees Eighty-Four Crores Ten Lacs Sixty Five Thousand One Hundred Forty) is lying in the Corporation Bank. It is humbly submitted that the present application has been filed before this Hon'ble Court so as to seek for an exemption from depositing the shortfall amount in the bank account because neither the Applicants nor the company, despite their best efforts could jointly or severally arrange the necessary balance funds to comply with the order dated 06.05.2021 passed by this Hon'ble Court.

9. The Applicants are annexing herewith a complete list of assets of the Company and each of the applicants herein, from 31st March 2014 till date.

10. In the present scenario, the applicants despite best efforts and intent, are unable to liquidate the aforesaid assets belonging to them and the Company, to arrange the entire shortfall amount directed by this Hon'ble Court, for depositing in the Corporation Bank account. It is not a case where the applicants have the money but are not willing to comply with the directions showing any affront to the orders of this Hon'ble Court. The applicants have genuine inability and do not have the wherewithal to deposit the shortfall amount in the Corporation Bank despite their best intentions and efforts. The Applicants most humbly state and submit that they have the utmost respect of this Hon'ble Court. The Applicants herein tender an unqualified apology to this Hon'ble Court for their genuine inability to comply with the directions of this Hon'ble Court vide order dated 06.05.2021 in the instant Contempt Petition for lack of adequate liquid funds.

11. The applicants however are willing to undertake to this Hon'ble Court that they would not create any encumbrance and would preserve all the above assets belonging to them or the Company for the future benefit of the petitioner subject to the final outcome of the enforcement of award proceedings/Section 48 proceedings pending before the Hon'ble Bombay High Court, wherein the pleadings are also complete. The applicants would also give such further undertaking to this Hon'ble Court as may deem just and expedient.

12. The applicants say that so far as the office premises of the Company at Mumbai, and the residential premises where the applicants reside in Mumbai or Panchgani are concerned, it is submitted that Mrs. Sudha Pradeep Jain wife of Applicant no.1 is registered owner of office premises Unit No. A-7 & A-8, Vimal Udyog Bhavan, Taikalwadi Road, Mumbai since 08-07-1999 and 19-07-2001 respectively, and registered owner of residential premises at Pleasant Palace, Narayan Dabholkar Road, Malabar Hill, Mumbai - 400 006 since 07-01-2011, and seven units of residential properties situated at Silver valley CHS, Panchgani (six units since 31.03.2011 and one more unit since 09.07.2012). Mrs. Shivani Siddhartha Jain wife of Applicant No. 2 Siddhartha Jain, and Mrs Priyanka Hrishi Jain wife of Applicant No. 3 Hrishi Jain are registered owners of office premises at Unit

No. A-9 & A-6 respectively, in Vimal Udyog Bhavan, Taikalwadi Road, Mumbai since 03-09-2012 & 30-08-2012. Mr. Rishab Jain son of Applicant No.1 and brother of Applicant No.2 & 3 is registered owner of office premises at Unit No. A-11 in Vimal Udyog Bhavan, Taikalwadi Road, Mumbai since 30-08-2012. The office premises at Juhu, Mumbai was a rented premises and was vacated in year February 2015. None of the premises mentioned in this paragraph are owned by the applicants. These facts are also being disclosed for providing complete information to this Hon'ble Court.

13. That, the Applicants inability to comply with the Order dated 06.05.2021 is genuine, unintentional and not lacking in bona fide.

14. In the above circumstances the applicants humbly beg to be pardoned for the same and seek for an exemption from complying with the directions contained in the Order dated 06.05.2021 of this Hon'ble Court.

15. That, the Applicants hold this Hon'ble Court in greatest respect and esteem.

16. The applicants in the above circumstances pray to this Hon'ble Court to graciously be pleased to accept their humble unqualified and unconditional apology, and exonerate them from the purview of the contempt proceedings, discharge of show cause notice of contempt proceedings. The applicants are also praying for an exemption from complying with the order dated 06.05.2021 of this Hon'ble Court to deposit the shortfall amount in the Corporation Bank, and suitably modifying the said Order dated 06.05.2021, while accepting such undertaking of the applicants which may deem just, expedient and to the satisfaction of this Hon'ble Court."

The aforesaid application for exemption from depositing the shortfall amount pursuant to order dated 06.05.2021 has been specifically rejected by this Court vide order dated 02.07.2021. Despite the above, till date, the

respondents have failed to deposit the shortfall amount pursuant to order dated 06.05.2021. Therefore, while considering the present contempt proceedings, the aforesaid factual scenario and the conduct on the part of the respondents are required to be considered.

7. The present contempt proceedings are opposed by the respondents – alleged contemnors on the grounds, inter-alia, that (i) the order passed by the learned Single Judge dated 22.01.2014, which has been confirmed by this Court vide order dated 19.08.2020 in Civil Appeal No. 5158/2016, is an order executable and therefore, the present contempt proceedings may not be entertained; (ii) that there is no wilful disobedience on the part of the respondents – alleged contemnors in not depositing the shortfall amount in their Corporation Bank account to maintain a balance of USD 60 million as they have no sufficient funds and therefore, non-compliance is beyond their control and therefore, their inability to comply with the order despite their best efforts does not warrant any punishment under the Contempt of Courts Act.

8. Now so far as the first contention resisting the present contempt proceedings, namely, the order passed by the learned Single Judge by the High Court by which the respondents were directed to maintain a balance of USD 60 million in their Corporation Bank account is executable is concerned, at the outset, it is required to be noted that in the present proceedings it is not the case of non-compliance of the order passed by the learned Single Judge confirmed by this Court alone. There is a further specific direction issued by this Court vide order dated 06.05.2021. Therefore, there is a non-compliance of direction issued by this Court dated 06.05.2021 by which the respondents were directed to deposit the shortfall amount so as to maintain a balance of USD 60 million. That thereafter, a further application for exemption from depositing the shortfall amount pursuant to order dated 06.05.2021 has also been dismissed by this Court. Therefore, thereafter it shall not be open for the respondents to submit that as order dated 22.01.2014 passed by the learned Single Judge is executable, the present contempt proceedings may not be entertained.

8.1 At this stage, a few decisions of this Court on contempt proceedings under the Contempt of Courts Act are required to be referred to. In the case of **Rama Narang** (supra) after referring to and taking into consideration the earlier decisions of this Court in the cases of **R.N. Dey** (supra), **Rita Markandey Vs. Surjit Singh Arora; (1996) 6 SCC 14** and **Bank of Baroda Vs. Sadruddin Hasan Daya; (2004) 1 SCC 360**, it is specifically observed and held by this Court that the petitioner can execute the decree can have no bearing on the contempt committed by the respondents. In the said decision, this Court also considered in detail (in para 31) the decision of this Court in the case of **R.N. Dey** (supra), which has been relied upon by the learned Senior Advocate appearing on behalf of the respondents in the present case. The para 24 of the decision is as under: -

> **"24.** All decrees and orders are executable under the Code of Civil Procedure. Consent decrees or orders are of course also executable. But merely because an order or decree is executable, would not take away the court's jurisdiction to deal with a matter under the Act provided the court is satisfied that the violation of the order or decree is such, that if proved, it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends substantially to interfere with the due course

> of justice. The decisions relied upon by the respondents themselves hold so as we shall subsequently see."

8.2 Apart from the fact that the facts in the case of **R.N. Dey** (supra) is distinguishable in as much as in the present case, there is further specific directions issued by this Court vide order dated 06.05.2021 even in the said decision also it is observed and held by this Court that discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law. It is further observed that the contempt is between a contemnor and the court and that an aggrieved party has no right to insist that the court should not exercise such jurisdiction.

8.3 In the case of **Welset Engineers and Anr.** (supra), it is observed and held by this Court that a party in breach of any order of court whether interlocutory or final is subject to being proceeded against in contempt. Orders are meant to be obeyed and a person, acting in breach of the order does so at that person's peril.

8.4 In the case of **SEBI** (supra), it is observed and held by this Court that non-compliance with the orders passed by this Court shakes the very foundation of our judicial system and

undermines the rule of law, which we are bound to honour and protect. This is essential to maintain faith and confidence of the people of this country in the judiciary. It is further observed that there is a need of iron hand to enforce rule of law, punish contemnors and maintain faith and confidence of the people in judiciary.

9. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and the subsequent specific directions issued by this Court in its order dated 06.05.2021, the objection on behalf of the respondents that as the order passed by the learned Single Judge of the High Court is executable and therefore, the present contempt proceedings may not be entertained is overruled.

10. Now so far as the submissions on behalf of the respondents that there is no wilful disobedience as they have no sufficient funds to deposit the shortfall amount and despite their best efforts, they are unable to get the requisite funds to comply with the order passed by this Court is concerned, at the outset it is required to be noted that all these submissions were made earlier in I.A. No. 68388/2021

seeking exemption from deposit of shortfall pursuant to order dated 06.05.2021 and the same have not been accepted by this Court and vide order dated 02.07.2021 their application for exemption has been dismissed. Thereafter, it shall not be open for the respondents to repeat and make the same submissions again and again. The respondents cannot be permitted to make the same submissions which have not been accepted and/or rejected by this Court earlier. Repetitive submissions which have not been accepted earlier by court that itself is a wilful disobedience and tantamount to contempt and it shows the conduct on the part of the contemnors.

11. Sufficient opportunities have been given to the respondents to deposit the shortfall amount so as to maintain a sum of USD 60 million in their Corporation Bank account. The first order passed by the learned Single Judge in their application under Section 9 of the Act, 1996 is passed in the year 2014 and even the same has been restored by this Court vide judgment and order dated 19.08.2020 and thereafter, further directions have been issued specifically directing the respondents to deposit the shortfall vide order

dated 06.05.2021 and thereafter their application for exemption from depositing the shortfall amount has been dismissed by this Court. Despite the above, the respondents have failed to deposit the shortfall amount and therefore, they have rendered themselves liable for suitable punishment under the provisions of the Contempt of Courts Act for wilful disobedience of not only the judgment and order passed by this Court dated 19.08.2020 in Civil Appeal No. 5158/2016 but also for wilful disobedience and non-compliance of order passed by this Court dated 06.05.2021 in the present application. The defence on behalf of the respondents lack bona fides. To maintain the rule of law and majesty of justice and so as to see that the faith and confidence of the people in judiciary is maintained, this is a fit case to entertain the present contempt proceedings and to punish the respondents under the provisions of the Contempt of Courts Act.

12. In view of the above and for the reasons stated above, we hold the respondents guilty for deliberate and wilful disobedience of judgment and order dated 19.08.2020

passed by this Court in Civil Appeal No. 5158/2016 as well as order dated 06.05.2021 passed by this Court in the present petition. The respondents have rendered themselves liable for suitable punishment under the provisions of the Contempt of Courts Act for such deliberate and wilful disobedience. However, before we pass any further order of punishment/conviction, we still give an additional opportunity to the respondents to comply with order dated 06.05.2021 passed in the present petition as well as judgment and order dated 19.08.2020 passed by this Court in Civil Appeal No. 5158/2016 to deposit the shortfall amount so as to maintain a balance of USD 60 million in their Corporation Bank account within a period of four weeks from today.

The aforesaid would have a direct bearing on the punishment to be imposed.

Put up the matter before this Bench on 12.08.2022 for further order on punishment.

.....J.

[M.R. SHAH]

NEW DELHI;
JULY 11, 2022

.....J.
[ANIRUDDHA BOSE]