

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

% **Order reserved on: 02 March 2023**
Order pronounced on: 24 April 2023

+ O.M.P.(EFA)(COMM.) 6/2016, EX.APPL.(OS) 3764/2022,
EX.APPL.(OS) 3850/2022, EX.APPL.(OS) 317/2023,
EX.APPL.(OS) 318/2023

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

Through: Mr. Arvind Nigam, Mr. Arun
Kathpalia, Sr. Advs. with Mr.
Amit Kumar Mishra, Ms.
Devna Arora, Ms. Samridhi
Hota, Mr. Varad Choudhary,
Ms. Gauri Goburdhun, Ms.
Astha Ahuja, Ms. Diksha
Gupta, Mr. Rohan Jaitley and
Mr. Kunal Chatterji, Advs.
Mr. Giriraj Subramaniam, Mr.
Simarpal Singh Sawhney, Mr.
Siddharth Juyal and Ms.
Urvashi, Advs. for Applicant in
EX.APPL.(OS) 318/2023, and
Objector in Aahan Structure.

versus

MALVINDER MOHAN SINGH AND ORS.

..... Judgement Debtor

Through: Mr. Aditya Dewan and Mr. Mr.
Sahil Chandra, Advs. for R-6 to
8.
Mr. Devina Sehgal and Mr.
Mohd. Ashaab, Advs. for R-
16&17.
Mr. Ritin Rai, Sr. Adv. with
Ms. Shally Bhasin, Mr.
Chaitanya Safaya, Mr. Prateek
Yadav, Ms. Gunjan Mathur,

Adv. for R-21/Yes Bank.
Mr. Sanjiv Kakra, Sr. Adv. with
Ms. Shally Bhasin, Mr.
Chaitanya Safaya, Mr. Prateek
Yadav and Mr. Akash Madan,
Adv. for Axis Bank Ltd.
Mr. Aashish Gupta, Ms.
Sadhika Gulati, Adv. for R-23
to R-27 in EA No. 3764/2022.
Ms. Aditi Mohan and Ms.
Sakshi Sharma, Adv. in I.A.
No. 5552/2019
Mr. Ashish Dholakia, Sr. Adv.
with Mr. Sandeep Das, Mr.
Siddharth Sharma, Mr.
Anandini Kumari and Mr.
Peeyush Agarwal, Adv. for
Religar.
Mr. Jayant Mehta, Sr. Adv.
with Ms. Roopali Singh,
Ms. Durga P., Ms. Sayobani
Basu, Mr. Akash Ray, Adv. for
Credit Suisse
Mr. Gaurav Mitra, Mr. Atul
Sharma, Mr. Aditya Vashisth,
Mr. Ananad Sengar and Ms.
Himanshi Rajput, Adv. for R-
22 in I.A No. 3763/2022.
Mr. Jayant Mehta, Sr. Adv.
with Ms. Roopali Singh, Ms.
Durga Priya, Ms. Sayobani
Basu and Mr. Akash Ray,
Adv. for JD- 25.
Mr. Sumit Goel, Ms. Sonali
Gupta, Mr. Ishan Nagar, Adv.
for ICICI Bank
Mr. Rajiv Nayar, Mr. Abhinav
Vasisht, Sr. Adv. with Mr.

Sanjeev Sharma, Mr. H.S. Chandhioke, Mr. Vaibhav Kakkar, Mr. Sahil Arora, Mr. Saleem Hassan, Ms. Vaishali Goyal, Mr. Rohit Dahiya, Mr. Siddharth Jain, Mr. Hriday Kochhar, Ms. Sannya Sud, Ms. Akshita Sachdeva and Ms. M. Das Gupta, Advs for Fortis Healthcare Limited.

Mr. L.K. Giri, Adv. for Garnishee RWL.

31

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O.M.P.(I) (COMM.) 206/2016

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

Through: Mr. Arvind Nigam, Mr. Arun Kathpalia, Sr. Advs. with Mr. Amit Kumar Mishra, Ms. Devna Arora, Ms. Samridhi Hota, Mr. Varad Choudhary, Ms. Gauri Goburdhun, Ms. Astha Ahuja, Ms. Diksha Gupta, Mr. Rohan Jaitley and Mr. Kunal Chatterji, Advs.

versus

MALVINDER MOHAN SINGH & ORS. Respondent

Through: Ms. Aditi Mohan and Ms. Sakshi Sharma, Advs. in I.A. No. 5552/2019.
Mr. Ateev Mathur, Mr. Tushar Sahu, Ms. Divya Rana, Advs. for RBL Bank
Mr. Aditya Dewan and Mr. Mr. Sahil Chandra, Advs. for R-6 to 8.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

EX.APPL.(OS) 3651/2022 in O.M.P.(EFA)(COMM.) 6/2016

1. The instant application has been moved by the execution petitioner for being accorded permission to withdraw the amount of INR 20,54,65,962.22 transmitted to the Registrar General of this Court pursuant to the order of 22 September 2022 passed by the Supreme Court in Contempt Petition (C) No. 2120 of 2018, Special Leave Petition (C) No. 20417 of 2017 and Suo Motu Contempt Petition (C) No. 4 of 2019 titled **Daiichi Sankyo Company Limited vs. Oscar Investments Limited and Others**¹.

2. For the purposes of clarity and completeness of the record, the directions as framed in the aforementioned order are extracted hereinbelow: -

“30. In the premises we pass following directions:

(a) Contemnor Nos. 9 and 10 are sentenced to suffer six months imprisonment and pay fine in the sum of Rs.5,000/- each within four weeks from today. In case of default of payment of fine, the contemnors shall undergo further imprisonment of two months.

(b) Special Leave Petition (Civil) No.20417 of 2017, Contempt Petition No.2120 of 2018 in SLP (C) No.20417 of 2017 and Suo Motu Contempt Petition (C) No.4 of 2019 are disposed of with a direction to the High Court, before whom the proceedings in execution are pending, to consider appointment of forensic auditor(s) to analyse the transactions entered into by the noticee banks and financial institutions and to look into whether such transactions were *bona fide* and entered into in commercial expediency.

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

¹ 2022 SCC OnLine SC 1281

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

(e) Certain shares which are still lying with the noticee banks and financial institutions, for example, the shares of FHL pledged with and continued to be held by RBL Bank which were dealt with in the order dated 15.04.2021 passed by this Court, shall be available to the executing court and shall abide by such order as the executing court may deem appropriate to pass.

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

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

(h) All pending proceedings before the concerned courts, including the First Information Reports and proceedings before NCLT shall be taken to logical conclusion in accordance with law.

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

3. The funds which were transmitted to this Court owe their genesis to the principal directions which were framed by the Supreme Court in terms of its judgement dated 15 November 2019 in **Vinay Prakash Singh vs. Sameer Gehlaut & Ors²** and which are extracted hereinbelow: -

² 2019 SCC OnLine SC 1480

“51. In view of the above discussion, we, dispose of this contempt petition in the following terms:-

(i) We find Sameer Gehlaut, Director of Indiabulls Housing Finance Limited and Director of Indiabulls Ventures Limited (Contemnor Nos.1 & 5), Gagan Banga, Director of Indiabulls Housing Finance Limited and Director of Indiabulls Ventures Limited (Contemnor Nos.2 & 6), Ashwini Kumar Hooda, Director of Indiabulls Housing Finance Limited (Contemnor No.3), Sachin Chaudhary, Director of Indiabulls Housing Finance Limited (Contemnor No.4), Divyesh Bharat Kumar Shah, Director of Indiabulls Ventures Limited (Contemnor No.7) and Pinank Jayant Shah, Director of Indiabulls Ventures Limited (Contemnor No.8), who are active directors of IHFL and IVL of knowingly and wilfully disobeying the orders of this Court dated 11.08.2017, 31.08.2017 and 15.02.2018 as continued on 23.02.2018 and find them guilty of committing contempt of this Court. We will hear them on the question of sentence. We afford an opportunity to contemnor nos.1-8 to purge themselves of the contempt by depositing the value of 12,25,000 shares as on 31.08.2017 in the Bombay Stock Exchange within eight weeks from today. In case, the said respondents purge themselves of the contempt, we may take a lenient view while imposing sentence.

(ii) Malvinder Mohan Singh, Director of Oscar Investments Limited and Director of RHC Holding Private Limited (Contemnor Nos.9 and 12) and Shivinder Mohan Singh, Director of Oscar Investments Limited and Director of RHC Holding Private Limited (Contemnor Nos.10 and 13) have knowingly and wilfully violated the orders of this Court dated 11.08.2017, 31.08.2017 and 15.02.2018 as continued on 23.02.2018. Therefore, we hold both of them guilty of committing Contempt of this Court. We give one chance to them to purge themselves of the contempt. We, direct that in case each of the contemnors deposits a sum of Rs.1170.95 crores in this Court within eight weeks from today then we may consider dealing with

them in a lenient manner, while imposing sentence.

(iii) In case any of the contemnors deposits the amount as directed hereinabove, this Court shall decide on the next date as to how this amount is to be disbursed.

(iv) The Registry is directed to register a suo motu contempt petition against RHC Holding Private Limited, Oscar Investments Limited, Malvinder Mohan Singh, Shivinder Mohan Singh and Fortis Healthcare Limited, for having wilfully violated the order of this Court dated 14.12.2018 and issue notice to them returnable for 03.02.2020 asking them to show cause why they should not be punished for contempt.”

4. In order to evaluate the prayer which is made in the present application, the following background facts may be noticed. The original execution petition pertains to a Foreign Award dated 29 April 2016³ passed by an Arbitral Tribunal comprising of Ms. Karyl Nairn, Mr. Justice (Retd.) A. M. Ahmadi and Prof. Lawrence G. S. Boo. The respondent nos. 1 to 20 arrayed in these proceedings and who suffered the Award shall, for the sake of convenience and ease of reference be referred to as the “Judgment Debtors” compendiously. The aforesaid Award was affirmed by this Court in terms of its judgement dated 31 January 2018. In terms of the said judgement, the Court had proceeded to dismiss the objections which had been preferred by the Judgment Debtors [except J.D. nos. 5 and 9 to 12 who were stated to be minors] under Section 48 of the **Arbitration and Conciliation Act, 1996**⁴.

³ Foreign Award

⁴ Act

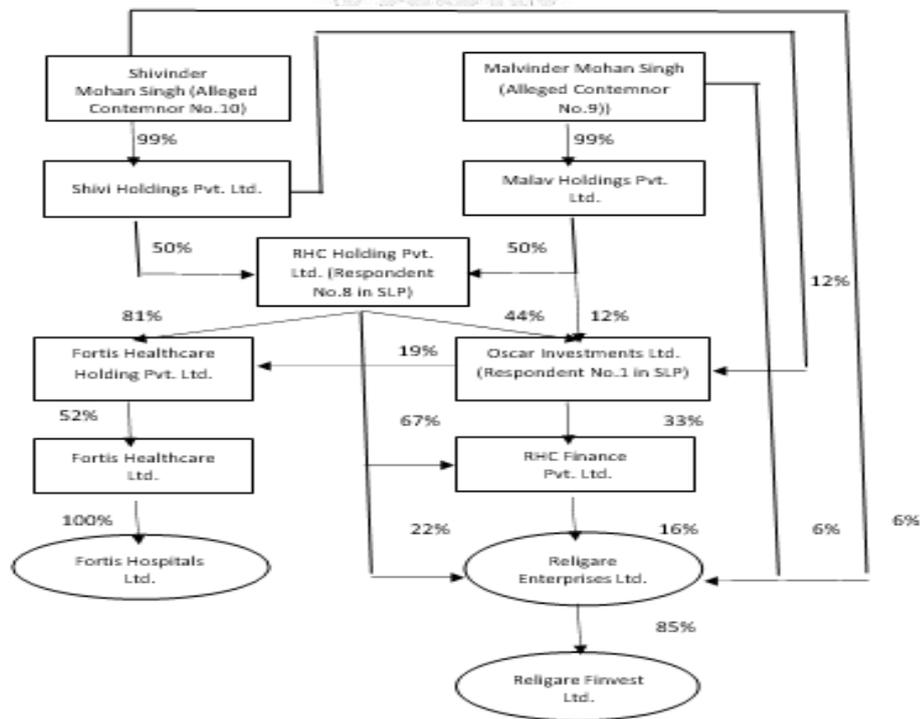
5. The aforesaid judgement was affirmed by the Supreme Court on 16 February 2018 when the special leave petitions preferred by the J.D.s' came to be dismissed. The execution petitioner further discloses that the High Court of the Republic of Singapore had also dismissed the application made to set aside proceedings filed by the J.D.s' in terms of its judgement dated 21 December 2018. The aforesaid judgement of the High Court was confirmed by the Court of Appeal of Singapore on 28 May 2020.

6. While J.D. nos. 1 to 20 were originally arrayed before the Arbitral Tribunal and are thus described as the judgement debtors, respondent nos. 21 to 37 came to be impleaded during the course of proceedings taken on the present execution petition as well as the special leave and contempt petitions preferred before the Supreme Court and in terms of orders passed therein. Insofar as proceedings before this Court are concerned, it would be pertinent to note that in terms of the Foreign Award dated 29 April 2016, J.D. nos. 1 to 20 had been held jointly and severally liable to pay a sum of approximately INR 2562 crores with further additional pre-award interest at the rate of 4.44% and post award interest at the rate of 5.33% aggregating to more than INR 4000 crores.

7. In the course of the proceedings taken on the enforcement petition which came to be instituted before this Court, an application numbered as I.A. No. 618 of 2017 came to be filed with the execution petitioner expressing an apprehension that the J.D.s' were seeking to secrete away the assets in order to defeat the right of recourse that the

execution petitioner could claim and were indulging in activities aimed at a systematic dissipation of assets to defeat the enforcement of the Award. It had been submitted that **Fortis Healthcare Holdings Private Limited**⁵ was the holding company and the value of its shares was based principally on its shareholding in the downstream operating company **Fortis Healthcare Limited**⁶ whose shares were being sold and encumbered by the respondents.

8. In order to appreciate the backdrop in which those allegations came to be made, it would be apposite to extract the holding structure of the corporate entities which were controlled principally by the judgment debtor nos. 1 and 6 and which has also been duly noticed by the Supreme Court in its orders extracted above: -



⁵ FHHPL

⁶ FHL

9. As would be evident from the aforesaid shareholding pattern, the judgment debtor nos. 1 and 6 principally controlled **Fortis Hospitals Limited**⁷, a listed company through FHHPL and FHL. The shareholding of FHHPL was in turn controlled by J.D. nos. 1 and 6 through **RHC Holdings Private Limited**⁸ and **Oscar Investments Limited**⁹. Taking cognizance of the allegations levelled in the aforesaid application, this Court on 21 June 2017 had taken note of the statement made by and on behalf of RHC and OIL to the effect that the value of the unencumbered assets comprising of equity shares in FHL as held by FHHPL would be maintained at all times and would thus constitute a realisable asset for the satisfaction of the Award.

10. The aforesaid statement has, in the course of the litigation which ensued, come to be described as the “fifth assurance”. The four previous assurances have been enumerated in the order of 15 November 2019 passed by the Supreme Court as would be evident from the following extracts: -

“Proceedings before the Delhi High Court

The first assurance

4. During the enforcement proceedings, the petitioner filed I.A. No. 6558 of 2016 before the High Court of Delhi praying that the respondents be restrained from alienating or encumbering their assets. The petitioner expressed an apprehension that the respondents would fritter away their assets which would make the award unenforceable. On 24.05.2016 Mr. Kapil Sibal, learned senior counsel appearing for the respondents assured the High Court that the interest of the petitioner will be protected.

⁷ FHL

⁸ RHC

⁹ OIL

Though this assurance was not recorded by the Court, the same forms a part of the letter sent by the counsel for petitioner, relevant portion of which reads as follows:-

“1...Further, while directing that, inter alia, the Arbitration Award dated 29 April 2016, be kept confidential, a formal protective order has not been passed by the Hon’ble Court on the strength of duly instructed oral assurance tendered by Learned Senior Counsel Mr. Kapil Sibal (appearing for the Respondents) that the Petitioner’s interest would be protected to the extent of the total sum awarded under the Arbitral Award dated 29 April 2016, and there would be no fait accompli. Mr. Kapil Sibal had also submitted that even recording of his personal statement in the order would affect the respondents’ interest in the share market as some of his clients are listed in stock exchange.”

It appears that the respondents had urged before the Court that their assurance should not be recorded in the order of the Court, since that might affect the value of their shares in the share market. This was the **first assurance** given by the respondents to the High Court of Delhi. It would be pertinent to mention that the fact that such an assurance was made is also recorded in the order of the High Court dated 23.01.2017 wherein Mr. Harish N. Salve, learned senior counsel appearing for the respondents 1 to 4 and 13 therein reiterated the assurance given to the Court as recorded in the letter dated 24.05.2016.

The second assurance

5. On 25.07.2016, the High Court of Delhi passed an order directing the respondents to disclose the details of their immovable assets and also to disclose the details of assets that have been alienated and encumbered to third parties. It appears that during this period reports appeared in various newspapers that the respondents were disposing their stakes in subsidiary companies and were also clandestinely disposing of their assets. Left with no alternative, the petitioner filed an Interlocutory Application being I. A. No. 618 of 2017 before the High Court of Delhi in which the following prayer was made: -

a. “Urgently pass an order directing the Respondents to secure the Award amount by

depositing it with the Registrar of the Delhi High Court or by providing adequate security or by bank guarantee or by any other means that this Hon'ble Court may deem fit;

b. Pass an order directing the attachment of the movable and immovable assets and properties of the Respondents, and any assets and properties in which the Respondents have any beneficial interests until the disposal of the present petition, at least to the extent of the amounts awarded in the Award;

c. Pass an order restraining the Respondents and their group companies from selling, alienating or encumbering their movable or immovable properties/assets in any manner whatsoever;

d. Pass ex-parte, ad interim orders in terms of prayers (a), (b) and (c) above and confirm the same after notice to the Respondents;"

On 23.01.2017, Mr. Harish N. Salve, learned senior counsel for some of the respondents before the High Court of Delhi reiterated the assurance given in the letter dated 24.05.2016 and sought two weeks' time to furnish an affidavit by one of the respondents giving the details of assets of all the respondents. This was the **second assurance.**

The third assurance

6. The information was not provided in the manner sought by the High Court which is reflected in the order dated 06.03.2017. The order records that the respondents have been directed to furnish details of all unencumbered assets both movable and immovable and not merely the list of the investments, loans and advances as reflected in the affidavit filed by the respondents. The respondents were directed to furnish further details and the counsel for respondents had submitted that this would be done within 1 week. The High Court in its order dated 06.03.2017 clarified as follows: -

"8. The Court would like to clarify that the above understanding by Respondent No.19 of what was required to be furnished in terms of the order dated 23rd January 2017 is not correct. The Respondents were in fact required to furnish the information relating to all the unencumbered

assets, both moveable and immovable, and not merely investments and loans and advances.”

7. On 06.03.2017 Dr. Abhishek Manu Singhvi and Mr. Rajiv Nayar, learned senior counsel appearing for the respondents made a statement that the complete details/particulars of all unencumbered assets would be filed before the Registrar within one week. Certificates of Chartered Accountants of the respondents were also directed to be filed giving the following details: -

(i) “the value of all the unencumbered assets, including both movable and immovable assets of Respondents 14 and 19, both the book value as well as the fair value;

(ii) where these assets include investments in equity shares, preference shares and debentures, to indicate to what extent are these investments in related/group entities of the Respondents and in companies whose shares are listed and which of these shares have a condition of right of first refusal.

(iii) a clarification as to how much of the borrowings reflected in the balance sheets are secured by way of pari passu charge on the present and future current assets of the companies.”

The Court again noted the statement of Dr. A.M. Singhvi and Mr. Rajiv Nayar to the following effect: -

“12. Both Dr. Singhvi and Mr. Nayar state that if any change is proposed in the status of any of the unencumbered assets whose details are to be furnished as directed hereinbefore, the Respondents will first apply to the Court.”

This was the **third assurance** on behalf of the respondents.

The fourth assurance

8. OIL and RHC filed the certificates disclosing the value of the unencumbered assets and investments. On 28.02.2017 OIL had unencumbered assets of a book value of 1953.70 crores and fair value of 1204.78 crores. The fair value of the unencumbered investments of OIL in listed entities including related/group entities was valued at 854.64 crores. As far as RHC is concerned,

the book value of the unencumbered assets was shown as 6,346.69 crores and the fair value thereof at 3579.26 crores. The fair value of unencumbered investments was shown as 3246.76 crores. Therefore, it was projected by the respondents that these two companies had a net value which was much more than the amount claimed by the petitioner.

9. As pointed out earlier FHL is a Public Limited Company in which OIL and RHC held majority shares amounting to 52.20% through their wholly owned subsidiary, Fortis Healthcare Holdings Private Limited (FHHPL) uptill March, 2017. On 25.05.2017, FHL issued notice to its shareholders proposing that the shareholding of foreign investors would be increased. Immediately, thereafter, the petitioner filed I.A. No. 7142 of 2017 before the High Court of Delhi praying that OIL and RHC be restrained from reducing their 100% shareholding in FHHPL and be restrained from indirectly transferring FHHPL shares in FHL. It was prayed that these two companies be directed to maintain their holding of 52% in FHHPL. In the meantime, the disclosures made by FHL to the Bombay Stock Exchange (BSE) showed that the shareholding of FHHPL in FHL had fallen to 45.7%.

10. On 19.06.2017 the High Court of Delhi recorded in its order that the learned senior counsel appearing for both OIL and RHC submitted that they are not seeking to change the status of any unencumbered assets as disclosed to the Court and the shareholding as disclosed in terms of the order dated 06.03.2017 shall not be affected. The statement was taken on record by the High Court and the application disposed of in terms of this statement. This effectively meant that the Court had restrained OIL and RHC from reducing their shareholding in FHL through FHHPL in any manner. Relevant portion of the order passed by the High Court of Delhi dated 19.06.2017 reads as follows: -

“5. Learned Senior Counsel for respondent no.14 and 19 submits that they are not seeking to change the status of any unencumbered asset as disclosed to the court and by mere passing of the impugned resolution, the shareholding as disclosed, in terms of order dated 06.03.2017, shall not be affected.

6. The statement is taken on record.

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

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

11. The order of 21 June 2017 was assailed before the Supreme Court with it being asserted that despite the undertakings given, the judgment debtors were acting in violation thereof and that no appropriate restraint orders were being passed. In the course of the pendency of the aforesaid proceedings before the Supreme Court, certain significant orders came to be passed which are also duly recorded in the final judgement of 22 September 2022 relevant parts whereof are reproduced hereinbelow: -

“4. While dealing with said Special Leave Petition (Civil) No.20417 of 2017, the proceedings arising from the order dated 21.06.2017 and the orders passed by this Court were noted by this Court in the Judgment as under:

“Proceedings before this Court

13. The order dated 21.6.2017 of the Delhi High Court was challenged by the petitioner before this Court and the main contention of the petitioner was that despite the respondents violating the undertakings time and again restraint orders were not being passed. In the Special Leave Petition (Civil) No. 20417 of 2017 filed by the petitioner this Court passed the following order on 11.08.2017: -

“In the interim it is directed that status quo as on today with regard to the shareholding of Fortis Healthcare Holding Private Limited in Fortis Healthcare Limited shall be maintained.”

As per the statutory disclosures made by FHHPL to the BSE and National Stock Exchange (NSE), it was disclosed that on 14.08.2017, 30,59,260 shares of FHHPL in FHL were pledged in favour of Indiabulls Housing Finance Limited (IHFL).

14. The petitioner filed a contempt petition being Diary No. 27334 of 2017 alleging that the conduct of the respondents in creating a 13pledge on 14.08.2017 is

violative of the order dated 11.08.2017 In the meantime on 21.08.2017, OIL filed an application being I.A. 77497 of 2017 for directions permitting sale of encumbered shares to pay its debts and also prayed that a clarification be issued that the order dated 11.08.2017 is limited to shares other than to those pledged to banks and financial institutions. In I.A. 77497 of 2017, OIL had stated as follows:--

“24. It is in these circumstances that the Respondent Company seeks a direction from this Hon’ble Court that the order dated 11 August 2017 passed by this Hon’ble Court is limited to shares other than those pledged to the banks and the financial institutions, the sale of which is being made after obtaining prior consent of the pledgee(s).

25. It is submitted that the said direction will not, in any event, have an impact on the potential creditors and that the availability of these funds will only help pare down the debt. This will only raise the value of the shares held by Respondents.”

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

15. On 31.08.2017, this Court directed as follows:-

“As the present Special Leave Petition is due to come up for a fuller consideration on 23rd October, 2017, we do not consider it necessary to delve into the issues raised at this stage as the time taken to answer the same would be the same as would be required to hear and decide the matter finally. We, therefore, decline to pass any order in the matter, save and except, to put on record that the interim order of this Court dated 11th August,2017 was intended to be in respect of both the encumbered and unencumbered shares of

Fortis Healthcare Limited held by Fortis Healthcare Holding Private Limited. Consequently, there will be no transfer of the shares to the extent indicated above.

Parties may complete the pleadings in the meantime.

As we have now clarified the previous order of this Court dated 11th August, 2017 no case for contempt is made out. However, it is needless to say that the present order and the above clarification would govern the rights of the parties henceforth. The contempt petition is accordingly disposed of.”

16. On this date, the contempt petition was disposed of and at the same time it was mentioned that the order and the clarification contained therein would govern the rights of the parties henceforth. The order dated 11.08.2017 and 31.08.2017 were later clarified by this Court vide order dated 15.02.2018 which reads as follows:-

“Having heard the learned counsels for the parties, we clarify our interim orders dated 11th August, 2017 and 31st August, 2017 to mean that the status quo granted shall not apply to shares of Fortis Healthcare Limited held by Fortis Healthcare Holding Pvt. Ltd. as may have been encumbered on or before the interim orders of this Court dated 11th August, 2017 and 31st August, 2017.

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

It would be pertinent to mention that on 23.02.2018, this Court passed the following order:

“Interim order of this Court dated 15th February, 2018 will continue to hold the field till the High Court decides the matter.”

17. During the period 06.09.2018 to 18.09.2018 Indiabulls Ventures Limited (IVL), with which FHHPL maintains a demat account transferred 12,25,000 shares of FHL held by FHHPL to IHFL. In the present contempt petition filed in October, 2018, it is alleged that this transfer of shares was in contempt of the orders dated 11.08.2017, 31.08.2017, 15.02.2018 and 23.02.2018.”

12. As would be evident from the aforesaid extract of the various orders that were passed by the Supreme Court from time to time, an issue arose with respect to the transfer of 12,25,000 shares of FHL held by FHHPL to **Indiabulls Housing Finance Limited**¹⁰, the respondent no.28 herein. The aforesaid pledge and transfer which is stated to have been created between 06 September 2018 to 18 September 2018 was asserted to be in contempt of the orders dated 11 August 2017, 31 August 2017, 15 February 2018 and 23 February 2018 passed by the Supreme Court.

13. While ruling on the aforesaid aspect, the Supreme Court in its judgement dated 15 November 2019 held as follows: -

“20. It would be pertinent to mention that IHFL filed an application in October, 2017 for clarification of order dated 31.08.2017. The stand of IHFL is that they have not transferred any shares encumbered after 11.08.2017. The case of the petitioner is that 12,25,000 shares were transferred in September,2018. This fact is also not denied by IHFL. However, according to IHFL this was done on the basis of instructions issued to IVL by IHFL pursuant to the loan document including a power of attorney dated 28.11.2016. The stand of MMS and RHC is that IHFL used some pre-signed instruction slips to make these transfers but these facts were denied by IHFL. Reliance by IHFL is also placed on the order dated 15.02.2018 quoted hereinabove.

¹⁰ IHFL

21. The main issue is whether these 12,25,000 shares were pledged prior to 11.08.2017 or not. At this stage it would be pertinent to mention that the stand of IHFL that no pledge was created after 11.08.2017 is incorrect. The disclosure made on 21.08.2017 by FHHPL to BSE and NSE clearly discloses that 30,59,260 shares of FHL held by FHHPL were pledged on 14.08.2017 in favour of IHFL. This disclosure of 21.08.2017 is a part of the record and not specifically denied by IHFL.

22. We may point out that till October 2017, IHFL was not represented in this Court. However, on 16.08.2017 and 31.08.2017 through emails RHC informed IHFL about the status quo order passed by this Court. Thus, IHFL cannot claim that they were not aware of this Court's orders. However, from the material on record especially the replies filed by OIL, RHC, MMS and SMS it is apparent that on 06.09.2018, 07.09.2018, 08.09.2018 IHFL transferred 6,00,000 shares of FHL held by FHHPL. When RHC came to know about these transfers, it immediately informed IHFL that transfers were in violation of the orders passed by this Court on 11.09.2017. Despite the communication dated 11.09.2018, IHFL continued to transfer shares of FHL held by FHHPL on 11.09.2018, 12.09.2018, 14.09.2018, 17.09.2018 and 18.09.2018. On 24.09.2018, this Court was informed that IHFL had transferred 12,25,000 shares held by FHHPL in FHL in violation of the Court's orders. As on 29.09.2018, another transaction of 9,04,760 shares had taken place. The main issue is whether 12,25,000 shares were encumbered or not.

25. This Court on 11.08.2017 directed that status quo with regard to shareholding of FHHPL in FHL be maintained. On 31.08.2017 it was clarified that the order would apply to both encumbered and unencumbered shares. On 14.08.2017, 30,59,260, unencumbered shares were pledged in favour of IHFL. As far as this violation of the order dated 11.08.2017 is concerned, in view of the order dated 31.08.2017, the same stands condoned. This would further mean that the unencumbered shares should have been reduced to 3,52,55,957.

28. This brings us to the shareholding pattern of FHL for the period between 01.07.2018 and 30.09.2018 because it is during this period that IHFL transferred the shares. According to IHFL these 12,25,000 shares stood pledged with them. Neither in I.A. No.109493 of 2017 nor in the reply filed by contemnor nos. 1-8, is there any clear-cut statement as to how and when the different pledges were created. Reference has been made to loan documents of 2016 and also to the pledge of 14.08.2017. According to alleged

contemnor nos. 1 to 8, FHL was maintaining a demat account with IVL. The case set up is that when the value of the shares of IHFL fell in the market, to make the security equal to the outstanding due to IHFL, further shares were transferred by IVL to IHFL. It is urged that this was done in view of the instructions given prior to 11.08.2017 by FHHPL to IVL and IHFL. These transfers were done on the basis of the delivery instructions slips executed by IHFL as power of attorney holder of FHHPL. Even if this be true, the alleged contemnors are guilty of violating the orders of this Court. The order dated 11.08.2017 clearly debars FHHPL from changing its shareholding in IHFL. Vide order dated 31.08.2017, it was clarified that the order dated 11.08.2017 would apply both to encumbered and unencumbered shares. It was only on 15.02.2018 that the order was clarified that it would not apply to shares encumbered prior to 11.08.2017 and 31.08.2017. A reading of the 3 orders makes it clear that no unencumbered shares could be charged after 31.08.2017 at least. Even if FHHPL had given power of attorney empowering IVL to transfer shares from its demat account to top up the security value, that power of attorney could not be used to violate the orders of this Court. What FHHPL could not do, could obviously not be done by its agent or attorney. The shares which were used to top up the security after 31.08.2017 were obviously unencumbered shares prior to this date. The plea is clearly unacceptable and a lame excuse for the wilful disobedience of the order directing maintenance of status quo which, as modified, was to apply to the unencumbered shares. The respondents were aware and cannot claim ignorance of the purported agreements under which they were required to top-up upon the securities, in case of fall of market value of the shares. In other words, the interim order passed by this Court was to apply even if there was a fall in market value of the securities held by the creditors.

29. To make this position clear, we may refer to the disclosures made by FHL to BSE. The above chart shows that in the quarter ending 30.06.2018, FHHPL held 32,82,851 shares in FHL out of which only 5,51,484 were encumbered, meaning that the balance 27,31,367 were unencumbered shares. The disclosure of 30.09.2018 and 31.12.2018 both reflect that the number of encumbered shares have not changed but the total shareholding of FHHPL in FHL has reduced from 32,82,851 to 11,53,091. This means that what was transferred were 21,29,760 unencumbered shares and not encumbered shares. The transaction of 12,25,000 shares therefore is out of the unencumbered shares because after 31.03.2018, the encumbered shares were much below 12,25,000.

30. We are not entering into the dispute whether the shares were transferred on the basis of pre-signed slips or delivery instruction slips based on the power of attorney but the fact remains that the official record shows that these shares were not encumbered and the contemnors have failed to place any cogent material on record to show that these 12,25,000 shares were pledged on or before 31.08.2017.

31. IHFL, in fact, flagrantly violated this Court's orders and made various transactions transferring even unencumbered shares. The best course available to IHFL would have been to approach this Court seeking a clarification before it made the transfers. This they did not do. We are, therefore, clearly of the view that IHFL and IVL and their officials i.e. contemnor nos. 1 to 8 knowing fully well that this Court had passed an order directing status quo to be maintained with regard to the holding of FHHPL in FHL, violated the order. There can be no manner of doubt that IHFL and IVL have violated these orders and, therefore, we find contemnor nos.1-8 who are active directors of IHFL and IVL guilty of knowingly and wilfully disobeying the orders of this Court and find them guilty of committing Contempt of Court. We will hear them on the question of sentence.

32. We afford an opportunity to contemnor nos.1-8 to purge themselves of the contempt by depositing the value of 12,25,000 shares as on 31.08.2017 in the BSE within eight weeks from today. In case, the said contemnors purge themselves of the contempt, we may take a lenient view while imposing sentence.”

14. Proceeding then to rule on the guilt of the individual contemnors, the Supreme Court observed as under: -

“39. A litigant should always be truthful and honest in court. One who seeks equity must not hide any relevant material. In the present case, the petitioner has violated the undertakings given to the Delhi High Court as also the orders of this Court. The Delhi High Court will deal with the issue in so far as the undertakings made before it are concerned. We have no doubt in our mind that contemnor nos.9 and 10 have also wilfully and contumaciously disobeyed the orders of this Court. What has happened during the period when this matter has been pending in this Court is that the shareholdings of FHHPL, which is wholly owned by OIL and RHC which in turn are controlled by SMS and MMS, have virtually vanished in FHL. FHHPL owns no shares in FHL now. It may be true that IHH Healthcare Bhd. (Malaysian Company) through its

actually owned subsidiary Northern TK Venture Pte Ltd. is now the majority stake holder but that is due to allotment of preferential shares. In addition to the preferential shares allotted to them, the shares which were owned by MMS and SMS through their holdings in FHHPL in FHL have vanished into thin air and the only conclusion which we can draw is that this was a well thought out plan to deprive the petitioner from the amounts due to it.

41. The order passed by this Court on 11.08.2017 with a clarification on 31.08.2017, and modification made on 15.02.2018, is not to be read in isolation but along with the solemn undertakings and assurances given by the contemnors on as many as five occasions before the Delhi High Court, the last one being as late as on 21.06.2017. These assurances were to the effect that even if the Court permits sale of encumbered shares for payment of debt, it would not have any impact on the (potential) creditors and availability of the funds would only pare down the debt and increase the value of the shares. Contrary to the aforesaid solemn assurances and undertakings, which were repeatedly reiterated to procure orders, the shareholding went into a downward spiral, as is apparent from the table in paragraph 23. There was a significant decline in the total number of shares held by FHHPL, both encumbered and unencumbered, which fell down from 27,21,59,955 and 5,29,31,574 in September 2016 to 5,51,484 and 6,01,607 in December 2018. The aforesaid fact with the impact on valuation was never brought to the notice of the Court and was concealed with the knowledge that these facts, if brought to the notice, would have substantial bearing on the orders that would be passed to protect the interest of the petitioner.

42. What is even more shocking and clearly contemptuous is the manner in which, in a well thought off plan, the authorised capital of FHL was increased with the objective and purpose to transfer controlling interest in the company. Consequently, the controlling interest of MMS and SMS came down in FHL, as the company changed hands. Controlling interest held by the majority shareholders has considerable market value. Further, the amount brought in by a foreign shareholder, who now has the controlling interest in FHL, has been transferred in a dubious and clandestine manner without full facts being brought on record. This amount is not available for payment and satisfaction of the Award. About Rs.4,600 crores has been transferred in a very hurried and clandestine manner to a trust registered in Singapore i.e. RHT Health Trust (RHT). Coincidentally, respondents no.9 and 10 themselves or through their holding companies were at one time the biggest unitholders in the trust. It is obvious that the

respondents being debtors are manoeuvring, transferring and converting the assets of value, with the desire and intent that the petitioners would not be able to recover the decretal amount as per the award.

43. We would, therefore, not read the orders of this Court in isolation but along with the five solemn assurances and undertakings given before the High Court. Directions given by this Court and the orders passed were in light of the fact that the contemnors always projected that the said assurances and undertakings were binding and adhered.

44. There can be no manner of doubt that contemnors 9 and 10 have changed the shareholding of FHHPL in FHL knowingly and wilfully. They have done this with a view to defeat the rights of the petitioner. They have also wilfully and contumaciously violated the orders of this Court dated 11.08.2017, 31.08.2017 and 15.02.2018. They are accordingly held guilty of committing contempt of court. We shall hear them on the question of sentence. We give one chance to the contemnors no.9 and 10 to purge themselves of the contempt.”

15. It was in the aforesaid backdrop that the Supreme Court proceeded to frame the directions which have been extracted above and which had afforded an opportunity to the parties found guilty of contempt to purge the same by depositing the value of 12,25,000 shares as per the share price prevailing on 31 August 2017 on the Bombay Stock Exchange.

16. The respondent no. 28 acting pursuant to the aforesaid liberty accorded, proceeded to deposit a sum of Rs. 17,93,40,000/- . It is the aforesaid amount along with accrued interest which was ultimately remitted to this Court with the observation that the said amount would be available to this Court for the purposes of execution of the Foreign Award. The execution petitioner has in view of the directions issued by the Supreme Court asserted that the amount presently held in

deposit is liable to be released in its favour. The aforesaid prayer has been opposed by FHsL and respondent no. 28 only.

17. Appearing for FHsL, Mr. Vashisht, learned senior counsel submitted that the amount which ultimately came to be deposited in the Supreme Court was one which had been obtained by IHFL by the sale of 12,25,000 shares of FHL held by FHHPL. The aforesaid deposit, according to learned senior counsel, was one which was for purging the contempt which had been found to be committed. It was however contended that FHsL is neither a judgment debtor nor a garnishee in the present enforcement proceedings. It was the submission of Mr. Vashisht that Daiichi merely by virtue of being the entity in favour of whom an award came to be rendered, cannot be recognised to have a superior or supervening right over the aforesaid monies. The Court's attention was also drawn to the detailed interim and final adjudicatory orders made by the **Securities and Exchange Board of India**¹¹ in the course of its investigation as well as to the suit filed by FHsL registered as CS (COMM) No. 468/2019 for recovery of monies against several of the J.D.s' arrayed in the present proceedings. It was submitted that if the money held by this Court were to be released exclusively in favour of Daiichi, it would cause irreparable loss to the objector, FHsL and to various other creditors. The claim of FHsL on the aforesaid deposit was asserted to arise in the following backdrop.

¹¹ SEBI

18. It was submitted that over a period of time FHsL had granted various loans to **Best Healthcare Private Limited**¹², **Modland Wears Private Limited**¹³ and **Fern Healthcare Private Limited**¹⁴. While Best is not arrayed in these proceedings, Modland and Fern, it was pointed out, stand arrayed as J.D. nos. 16 and 17 respectively herein. It was pointed out that the suit which had been instituted by FHsL for recovery of monies also included J.D. nos. 1, 6, 16, 17 and 19 as defendants therein. The credit facilities which were extended to Best, Modland and Fern were explained to be in the nature of Inter Corporate Deposits¹⁵ duly secured in favour of FHsL in terms of the separate loan agreements which came to be drawn and executed. It was pointed out that the aforesaid ICDs' were originally extended in the year 2011 and renewed from time to time. As per the disclosures made by FHsL in its objections, it was pointed out that in terms of the three principal loan agreements which were executed by Best, Modland and Fern, the total lending amounted to Rs. 155,07,00,000/-, Rs. 1,55,07,00,000/- and Rs. 1,84,00,00,000/- respectively for a period of 90 days at an interest of 14% p.a. Mr. Vashisht also underlined the fact that in order to secure the aforesaid lending, a charge also stood created upon the present and future assets of Best, Modland and Fern and which also stood duly registered in accordance with the relevant provisions made in the Companies Act 2013¹⁶. The details of the

¹² Best

¹³ Modland

¹⁴ Fern

¹⁵ ICDs'

¹⁶ 2013 Act

charges which stood created and stand registered have been set forth in Para 3 of the Objections.

19. The Objector FHsL has placed its right of recovery against Best, Modland and Fern as well as other respondents based upon various observations and directions as contained in the order passed by SEBI in the course of its investigation. It would be relevant to note that SEBI appears to have commenced an investigation into the affairs of **Malvinder Mohan Singh**¹⁷, **Shivinder Mohan Singh**¹⁸ and the various corporate entities controlled by them in February 2018. In the course of that enquiry, SEBI passed an interim order of 17 October 2018 in terms of which FHL and FHsL were directed to take steps to recover an amount of Rs. 403 crores approximately, from Noticee nos. 3 to 11 as arrayed before it. The position of the noticees before SEBI are set out hereinbelow: -

Noticee No.	Name of Noticees
1.	Fortis Healthcare Limited
2.	Fortis Hospitals Limited
3.	RHC Holding Private Limited
4.	Shivi Holdings Private Limited
5.	Malav Holdings Private Limited
6.	Malvinder Mohan Singh
7.	Shivinder Mohan Singh

¹⁷ MMS

¹⁸ SMS

8.	Religare Finvest Limited
9.	Best Healthcare Private Limited
10.	Fern Healthcare Private Limited
11.	Modland Wears Private Limited

20. It further framed directions for the Noticee nos. 3 to 11 to jointly and severally repay the aforementioned amount along with due interest to FHL. SEBI additionally restrained noticee nos. 3 to 11 from disposing of or alienating any of their assets or diverting funds except for the limited purposes specified in Para 15(b) of that order. In the course of the enquiry which was initiated and as would be evident from the contents of the order of 17 October 2018, SEBI came to notice the following wrongdoings which appear to have been committed: -

2. SEBI held a meeting with the auditors of the company (i.e. Deloitte Haskins & Sells LLP) on February 12, 2018 to understand the issues raised in the aforesaid article of Bloomberg. During the course of discussions, the auditors mentioned *inter-alia* the following:

(a) Fortis Healthcare Limited, through its subsidiary, has given Inter Corporate Deposits ("ICD") to 3 Indian companies to the tune of Rs.473 crores from 2013-14 onwards. These transactions were not classified as related party transactions.

(b) These loans were given in the beginning of each quarter and returned by the companies by the end of the quarter and thereby never reported in the balance sheet as the outstanding amount at the end of the quarter was NIL. This has been happening from the FY 2013-14 onwards. However, for the quarter ended September 2017, the amount was not returned by the said 3 borrower companies. The auditors mentioned that they raised the issue with the company and did not receive any response.

(c) On independent examination of filings of these 3 borrower companies with MCA, it appeared that these companies did not have enough cash flows to repay the amount to Fortis. These companies had the same set of directors also.

(d) The board and audit committee of Fortis have not validated the accounts for the quarter ended September 2017 and December 2017.

(e) The auditors mentioned that they referred the matter to audit committee for investigation.

(f) The auditors also stated that during discussions, the management of Fortis informed them that the 3 borrower companies to whom ICDs were given have become related parties to the company/ promoters due to some internal restructuring of ownership from December 15, 2017 onwards.

4. In order to find the ultimate utilization of funds of FHL, the entire transactions in the bank accounts of the 3 borrower companies and the promoter/ promoter connected entities were required to be examined in detail from FY 2011-12 to FY 2017-18. This required analysis of voluminous data in trailing of funds in the bank statements of the FHL, FHsL, the 3 borrower companies, promoter/ promoter connected entities and any other entity that had significant financial transactions with these entities along with the analysis of nature of transactions and underlying documents. Hence, SEBI appointed a Forensic Auditor [MSA Probe Consulting Pvt. Ltd. ("MSA")] on May 10, 2018 to examine the alleged diversion of funds from FHL / its subsidiaries for the benefit of promoter / promoter connected entities.

6. The major findings of the report by MSA under the abovementioned heads are as under:

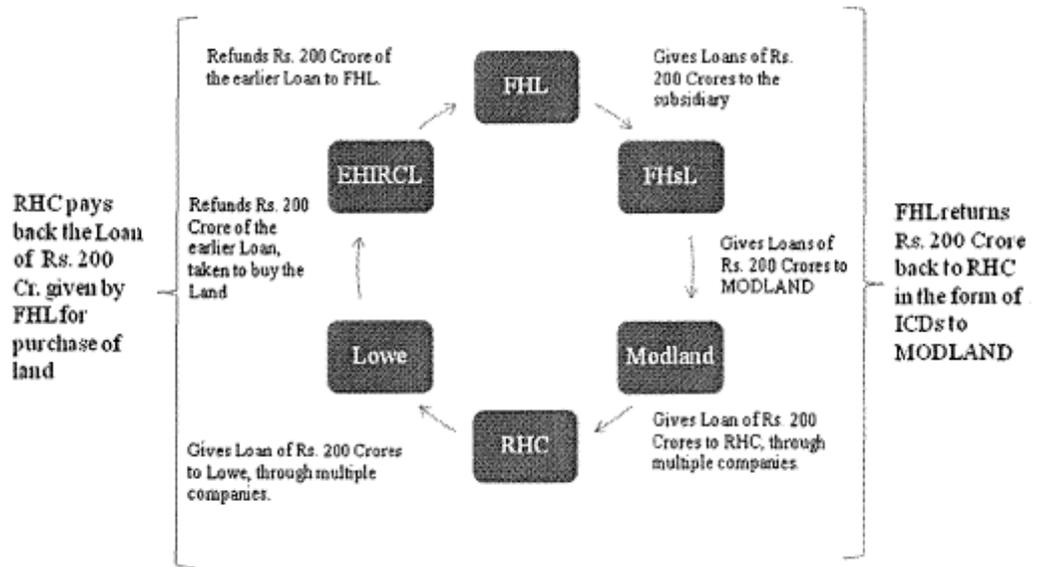
A. ICDs issued in December 2011 for the transfer of Land to RHC Holding

(1) M/s RI-IC Holding Pvt. Ltd., which is a Promoter Entity of FHL and FHsL, wanted to purchase a parcel of land at Golf Course Extn. Road, Sector - 62, Gurgaon, which was held by M3M India Pvt. Ltd. However, the said parcel of land was first acquired indirectly by FHL through its subsidiary Escorts Heart Institute and Research Centre Ltd. ("EHIRCL") and in the name of another company, Lowe Infra and Wellness Private Limited ("Lowe") in May 2011.

For this, FHL entered into an agreement to purchase the said parcel of land through its subsidiary EHIRCL for Rs.600 crores. In pursuance of the same, FHL gave a loan of Rs.576 crores to EHIR.CL between June 07, 2011 and July 28, 2011. FHL had arranged funds for the said loan to EHIRCL by issuing Commercial Papers to Axis Bank, HDFC Bank, Bank of India, HDFC Ergo and NABARD. Upon receiving the said loan of Rs.576 crores from FHL, EHIRCL loaned the same amount to Lowe, which ultimately utilized the same to purchase the land from M3M India Pvt. Ltd. The repayment of the abovementioned Commercial Papers were made by FHL during the period from December 2011 to March 2012.

(2) Subsequently, on December 13, 2011, EHIRCL (a subsidiary of FHL) in its board meeting passed a resolution to recall the advance paid to Lowe and end the agreement entered into by it with Lowe. Thereafter, the promoter entity of FHL i.e.M/s RHC Holding Pvt. Ltd. ("**RHC**") took over the land from Lowe. In such a scenario, since the money used by Lowe to initially acquire the land from M3M India Pvt. Ltd. had come as loan from FHL through EHIRCL, the consideration amount paid by RHC for the subsequent takeover of land from Lowe should have ultimately gone back to FHL. However, the same did not happen as RHC did not actually pay any money for the said acquisition. Instead, it merely entered into a series of transactions involving circular movement of funds to create a smokescreen to cover the said fact. As part of the same, it just rotated Rs.200 crores three times on 28th December 2011 through the 3 borrower companies, to create a mirage that Rs.576 crores [along with interest, total amounting to Rs.600 crores (approx.)] has been paid back to FHL. The same involved granting ICDs by FHL to the three borrower companies through FHsL. To illustrate the modus operandi for the same, the circular movement of funds between RHC and Modland (one of the three borrower companies) is depicted below:

Rotational Movement of funds through Modland on 28/12/2011



(3) In the above depiction, it can be seen that the movement of funds started from RHC on 28/12/2011 wherein RHC Paid Rs.200 crores to Lowe. Lowe, on the same date, transferred this Rs.200 crores to pay back part of the loan it had taken from FHL to purchase the land. Thereafter, FHL gave a loan / ICD of Rs.200 crores to Modland through FHsL on the same date. Thereafter, modland, through multiple entities transferred the said amount of Rs.200 crores to RHC the very same day. Thus, Rs.200 crores which had first moved out of RHC had ultimately come back to RHC by following a circuitous route. The complete rotation of funds as mentioned above had taken place on the same day. Similar circular movement of funds was repeated between RHC and the other two borrower companies (Best and Fern) on the same date. The same was done to falsely portray that RHC had paid the consideration money of Rs.600 crores in three tranches to Lowe for the land on 28/12/2011. However, in reality, no consideration was paid by RHC. It was found that all the accounts that have been used for the rotation are maintained with Axis Bank.

(4) It was found that later RHC repaid the said amount of Rs.600 crores to FHL through FHsL with 14% interest per annum over a period of four years. The repayment was completed by 31st July 2015. Thus, though RHC ultimately paid the consideration for land, it took 3-4 years for making

payments. In other words, CDs/loans that FHL provided to Best, Fern and Modland through FHsL had actually been utilized by RHC for a period of 3-4 years.

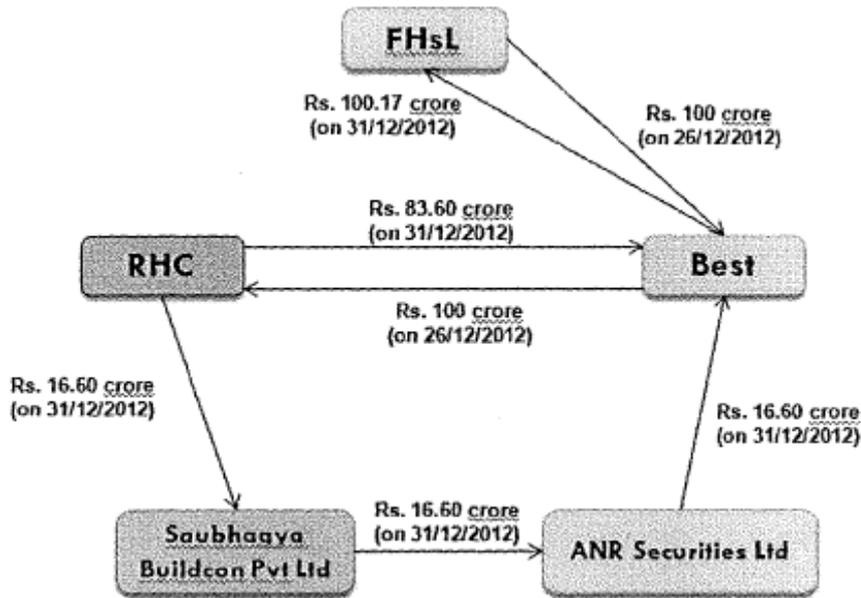
(5) It appears that the reason for routing the loans through unrelated entities apparently was to circumvent the provisions of Clause 32 of the Listing Agreement).

B. Short term loans given by FHsL from time to time for the benefit of Promoters

(6) It was noted that besides the ICDs as mentioned above, FHsL (a 100% subsidiary of FHL) has given numerous short term loans to unrelated entities (viz. Best, Fern and Modland). All the loans were interest bearing loans. In order to identify the ultimate beneficiaries of the short term loans provided by FHsL to Best, Fern and Modland, the money trail for each of the loan transaction and the repayment transaction was established.

(7) It was observed that the loans given to the borrower companies (Best, Fern, modland) had been immediately transferred to promoter related entities (viz. RHC and Religare Finvest Limited) on the very same day or within a couple of days and the repayment of such loans was also arranged by the aforementioned promoter related entities.

(8) An example of loan transaction is given below:



(9) From the above chart, it is observed that FHsL gave short term loan of Rs.100 crores to Best on 26/12/2012. On the same day, Best transferred Rs.100 crores to RHC. RHC repaid Rs.83.60 crores directly to Best on 31/12/2012 and Rs.16.60 crores indirectly to Best on 31/12/2012 (through Saubhagya Buildcon Pvt Ltd and ANR Securities Ltd). Best repaid the amount of Rs.100.17 crores to FHsL on 31/12/2012. Hence, the ultimate beneficiary of loan given by FHsL to Best (an unrelated entity) was RHC (promoter entity of FHsL).

(10) As stated above, the short term loans given by FHsL to the borrower companies (Best, Fern, Modland) were immediately transferred to RHC and other promoter related entities on the very same day or within a couple of days and the repayment of such loans was also arranged by RHC / other promoter related entities. However, out of such short term loans, 2 loans to the tune of Rs.100 crores given by FHsL to Best (loan of Rs.75 crore) and Fern (Rs.25 crores), which in turn were passed on to a promoter related entity (viz. Religare Finvest Limited), were not repaid by the promoter related entities. Instead, their repayment was done by Best and Fern out of the funds of FHsL itself which had come to them through Modland. Details of the said repayment of loans by Best and Fern to FHsL have been provided in para 6(15)(c) of this order.

(11) From the above, it emerged that the loans given by FHsL to 3 borrower companies were for the sole purpose of making available funds to promoter and related entities. Though it was portrayed that the loans were given to Best, Fern and Modland which were apparently not connected to FHsL or its directors / promoters at the time of giving the loans, the ultimate beneficiaries of such loans were RHC Holding and other promoter related entities. (12) Further, similar to the process followed in granting of short term loans and subsequent routing to promoter entities as mentioned above, the repayment of such short term loans was made by the promoter related entities by routing the funds through multiple companies and the movement of funds had happened mostly on the same day or in a couple of days.

(13) It *prima facie* appears that the routing of loans from FHsL to RHC through unrelated entities apparently was done to circumvent the provisions of Clause 32 of the

Listing Agreement and Regulation 53(f) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 as well as to misrepresent the transactions in the books of FHsL.

C. Ultimate Utilization by Promoter Entities of ICDs which are outstanding till date:

(14) From F.Y. 2011-12 to F.Y. 2017-18, numerous transactions were observed between FHsL and the below mentioned entities(Best, Fern and Modland) relating to granting of ICDs and receipt of repayment & interest. The outstanding principal amount of the ICDs with each one of them as on 31st May 2018 is given in table below:

Name of the borrower entity	Principal Amount Outstanding as on 31/5/2018 (in Rs. crores)
Best Healthcare Private Limited	98.00
Fern Healthcare Private Limited	105.00
Modland Wears Private Limited	200.00
Total	403.00

(15) To clearly understand the true nature of the transactions and the movement of funds, the roll-over transactions in ICDs and the interest payments were ignored and the following actual movement of funds was traced out from the bank account statements of the said three borrower companies:

- a) **Best-FHsL** paid Rs.98 crores to Best on 20/05/2016. On same date, Best transferred Rs.98 crores to Torus Buildcon Pvt Ltd. ("**Torus**"). Thereafter, Torus transferred Rs.98 crores to Ranchem Private Limited ("**Ranchem**") on the same date. Ranchem paid Rs.98 crores to RHC on 20/05/2016 and RHC paid Rs.102.7 crores to RHC Commercial Paper A/con 20/05/2016 which was finally used by RHC for repaying its loan to India Bulls Liquid Mutual Fund on 20/05/2016. **Hence, the amount of Rs.98 crores that was given by FHsL to Best (through ICD) was actually utilized by RHC Holding to pay off its debt.** As on 31/05/2018, ICD amount of Rs.98 crores was still outstanding from Best.
- b) Fern-FHsL paid Rs.175 crores to Fern on 04/04/2016. On same date, Fern transferred Rs.175 crores to ANR Securities Pvt Ltd ("**ANR**").

Thereafter, ANR transferred Rs.175 crores to RHC on 04/04/2016 and RHC paid Rs.200.40 crores to HDFC Limited on 04/04/2016 to clear its outstanding dues for loan taken from HDFC Limited. It was also observed that out of Rs.175 crores, Fern has made a repayment of Rs. 70 crores to FHsL on 21/02/2018. However, Rs.105 crores was still outstanding from Fern as on 31/05/2018. **Hence, out of Rs.175 crores that was given by FHsL to Fern through ICD, Rs.105 crores was actually utilized by RHC Holding to pay off its debt.**

c) **Modland-FHsL** issued two ICDs to Modland. With reference to the first ICD, FHsL paid Rs.100 crores to Modland on 04/04/2016. On the same date, Modland transferred Rs.100 crores to Torus. Thereafter, Torus transferred Rs.25 crores to Fern and Rs.75 crores to Best on 04/04/2016. Fern and Best utilized this Rs.100 crores to repay certain earlier loans of the same amount which they had taken from FHsL, details of which are mentioned at Para 6(10) of this order. It may be noted from para 6(10) that the said earlier loans of Rs.100 by FHsL to Best (Rs.75 crores) and Fern (Rs.25 crores) were ultimately passed on to Religare Finvest Limited. Since the earlier loans amounting to Rs.100 crore that FHsL gave to Best and Fern were ultimately transferred to Religare Finvest Limited and the repayment of such loans was arranged by Best and Fern from the abovementioned first ICDs of 100 crores given by FHsL itself, **the ultimate beneficiary of the first ICD of Rs.100 crore was Religare Finvest Limited.**

With reference to the 2nd ICD, FHsL paid Rs.100 crores to Modland on 04/04/2016. On same date, Modland transferred Rs.100 crores to Torus. Thereafter, Torus transferred Rs.100 crores to Addon Realty on 04/04/2016. Addon Realty paid Rs.100 crores to Religare Finvest Limited on 04/04/2016. **Hence, the amount of Rs. 100 crores (i.e. 2nd ICD) that was given by FHsL to Modland (through ICD) was ultimately transferred to Religare Finvest Limited.** As on

31/05/2018, the aforementioned ICDs to the tune of Rs.200 crores were still outstanding from moddland.

(16) Based on the above, the summary of ICDs amount still outstanding and their ultimate utilization is shown in table below:

ICD issued to	Principal Amount (in Rs. crores)	Ultimate Utilization
Best Healthcare Private Limited	98.00	Used by RHC Holding to pay off its debt to India Bulls Mutual Fund
Fern Healthcare Private Limited	105.00	Used by RHC Holding to pay off its debt to HDFC Limited
Modland Wears Private Limited	100.00	Paid to Religare Finvest Limited
	100.00	Paid to Religare Finvest Limited
TOTAL	403.0	

(17) Hence, there is outstanding principal amount of Rs.403 crore (excluding interest) that is owed by the borrowers (aforementioned three entities) to FHsL.

D. Misrepresentation in financial statements through structured movement of funds

(18) FHsL has entered into multiple structured transactions over a period starting from June 30, 2016 till June 30, 2017, which were *prima facie* fictitious and fraudulent in nature. These pertained to various ICDs granted by FHsL to Best, Fern and Modland, which were shown to have been squared off at the end of each of the following quarters:

- Q1 of F.Y. 2016-17 (1st April 2016 to 30th June 2016),
- Q2 of F.Y. 2016-17 (1st July 2016 to 30th Sept. 2016),
- Q3 of F.Y. 2016-17 (1st Oct. 2016 to 31st Dec. 2016),
- Q4 of F.Y. 2016-17 (1st Jan 2017 to 31st March 2017)
- and
- Q1 of F.Y. 2017-18 (1st April 2017 to 30th June 2017)

(19) However, in reality, the ICDs were not squared off but were fictitiously and fraudulently shown to have been repaid through a structured movement of funds between FHsL and the borrower companies at the end of each quarter to give rise to an accounting fiction that the payment due for all the ICDs has been received.

(20) An example of such *prima facie* fictitious and fraudulent structured transactions can be seen from the transactions between FHsL and Best for the roll over carried out for the 1st quarter of F.Y. 2017-18 (April 01, 2017 to June 30, 2017). For the said quarter, the transaction as recorded in the books of Accounts of FHsL as on Quarter ending on June 30, 2017 are as follows:

Date	Particulars	Amt. Received from Best (in Rs. Crore)	Amt. Paid to Best (in Rs. Crore)	Balance (in Rs. Crore)
	Opening Balance			150
30/06/2017	Loan received back	150		
01/07/2017	Loan Given		155.07	155.07

(21) From the above table, it appears that the closing balance receivable from Best at the end of the quarter is NIL, as per the books of accounts of FHsL. However, the actual movement of funds between FHsL and Best, as reflected in the bank statement of Best, is as follows:

Actual Movement of funds between FHsL and Best (as reflected in the bank statement of Best)					
Date	Particulars	Cheque No.	Amt. Paid (in Rs. Crore)	Amt. Recd. (in Rs. Crore)	Balance (in Rs. Crore)
	Opening Balance				0.09
01/07/2017	Recd from FHsL	05836		30	30.09
01/07/2017	Paid to FHsL	00112	30		0.09
01/07/2017	Recd from FHsL	05835		30	30.09

01/07/2017	Paid to FHsL	00110	30		0.09
01/07/2017	Recd from FHsL	05834		30	30.09
01/07/2017	Paid to FHsL	00111	30		0.09
01/07/2017	Recd from FHsL	05833		30	30.09
01/07/2017	Paid to FHsL	00109	30		0.09
01/07/2017	Recd from FHsL	05832		30	30.09
01/07/2017	Paid to FHsL	00107	30		0.09
01/07/2017	Recd from FHsL	05827		5.07	5.16
01/07/2017	Paid to FHsL	00108	5.07		0.09

(22) From the above table, it is observed that FHsL and Best have rotated funds through multiple cheques of Rs.30 crores each which were cleared by the bank in the account of both FHsL and Best on the same date. It is also observed that though the actual movement of funds (both inflow and outflow) between FHsL and Best had taken place only on 01/07/2017, FHsL, has fraudulently backdated all the inflow transactions (gross receipts) to 30/06/2017 in its books of accounts, by showing them as repayments received from Best. Further, it is seen that though an amount of Rs.30 crores was moved back and forth multiple times to show that the principal amount of Rs.150 crores was repaid by Best to FHsL on 30/06/2017 and thereafter Rs.155.07 crores was again given by FHsL to Best on 01/07/2017 as fresh I CD/loan, the whole exercise was a sham transaction with no real transfer of funds.

(23) It was also observed that the balance in bank account statement of Best on 30/06/2017 (the day on which cheques to the tune of Rs. 150 crores were issued) was Rs.0.09 crore only.

(24) Similar modus operandi of executing the structured transactions was noticed between FHsL and the 3 borrower companies (Best, Fern and Modland) for all the above mentioned five quarters during April 01, 2016 to June 30, 2017.

(25) It was noted that in almost all instances of bank transactions between FHsL and the 3 borrower companies between 28/12/2011 to 31/03/2016 (i.e. prior to the abovementioned five quarters), the method adopted was direct bank transfer through **NEFT/ RTGS/** Transfer letter. However, from 31st March 2016, cheques were used to orchestrate the structured transactions as they help in creating the accounting fiction that funds have been received on the last day of the quarter, when the real money movement happened only on the first day of the next quarter.

(26) From the above, it emerged that the structured transactions at the encl of each quarter have been carried out to misrepresent the true financial position of FHsL at the end of each quarter. Through these transactions, the position of funds lying in the bank account of FHsL at the encl of

each quarter has been artificially inflated by following amounts:

Quarter ending	Amount by which bank balance was inflated (in Rs. crores)
June 30, 2016	473.00
September 30, 2016	473.00
December 31, 2016	473.00
March 31, 2017	473.00
June 30, 2017	478.00

(27) In addition to the artificial inflation of bank balance, the transactions also masked the fact that the short term loans that the company had given were not performing and that in most probability had gone bad. Thus, the same should have been written off from the books of FHsL as on June 30, 2016 itself (i.e. when the aforementioned structured transactions were executed for the first time) which would have led to a loss of Rs.473 crores in the books of FHsL.

(28) Hence, the disclosures provided by FHL and FHsL in their quarterly statements for the above period and the Financial Statements for F.Y. 2016-17 had been grossly misrepresented.

10. The *prima facie* role of FHL and FHsL in the alleged diversion of funds through the conduit entities (viz. Best, Fern and Modland) to RHC Holding and Religare Finvest Limited for the ultimate benefit of Shivi Holdings Private Limited, Malav Holdings Pvt. Ltd., Shri Shivinder Mohan Singh and Shri Malvinder Mohan Singh has already been established in the above paragraphs. Thus, all these entities have *prima facie* acted in a fraudulent manner in the said diversion of funds. From the above observations and findings, it *prima facie* appears that the abovementioned entities (Noticee nos. 1 to 11), by indulging in diversion of funds to the tune of Rs.403 crore (approx.) from a listed company (Fortis Healthcare Limited through FHsL) for the ultimate benefit of its parent company (i.e. RHC Holding Private Limited) and another group company (i.e. Religare Finvest Limited), have violated the provisions of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d) and 4(1) of the SEBI (Prohibition of

Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations, 2003).

15. In view of the foregoing, in order to protect the interest of the investors and the integrity of the securities market, I, in exercise of the powers conferred upon me by virtue of section 19 read with sections 11 (1), 11 (4) and 11 B of the SEBI Act, 1992, hereby issue the following directions:

(a) FHL (i.e. Noticee no. 1) shall take all necessary steps to recover the abovementioned amount of Rs.403 crore (approx.) along with due interest from Noticee nos. 2 to 11 (viz. FHsL, RHC, Shivi Holdings Pvt. Ltd., Malav Holdings Pvt. Ltd., Shri Malvinder Mohan Singh, Shri Shivinder Mohan Singh, Religare Finvest Limited, Best, Fern and Modland), within three months of date of this order.

(b) The Notice nos. 2 to 11 (viz. FHsL, RHC, Shivi Holdings Pvt. Ltd., Malav Holdings Pvt. Ltd., Shri Malvinder Mohan Singh, Shri Shivinder Mohan Singh, Religare Finvest Limited, Best, Fern and Modland) shall, jointly and severally, repay the abovementioned amount of Rs.403 crores (approx.) along with due interest to FHL, within three months of this order.

(c) The Noticee nos. 2 to 11 (viz. FHsL, RHC, Shivi Holdings Pvt. Ltd., Malav Holdings Pvt. Ltd., Shri Malvinder Mohan Singh, Shri Shivinder Mohan Singh, Religare Finvest Limited, Best, Fern and Modland) shall, pending completion of the investigation and till further order, not dispose of or alienate any of their assets or divert any funds, except for the purposes as mentioned under para 15(6) and for meeting expenses of day-to-day business operations, without the prior permission of SEBI.

(d) The Notice nos. 6 and 7 (viz. Shri Malvinder Mohan Singh and Shri Shivinder Mohan Singh) shall not associate themselves with the affairs of FHL in any manner whatsoever, till further directions.”

21. The aforesaid order was modified by SEBI in certain respects by its subsequent orders of 21 December 2018 and 19 March 2019.

SEBI ultimately passed its final adjudication order on 19 April 2022 and the relevant parts thereof are reproduced hereinbelow: -

“18. I note that none of the Notices herein have disputed the impugned transactions which are more specifically mentioned at para 10 of the SCN and reproduced at para 8 of this order. To put them in nutshell and to capture the essence of the findings of the investigation, it may be said that since June 2011, FHL was used as a cash cow by the Erstwhile Promoters to meet the funding requirement of RHC Holdings (para 8.6.1 and para 8.6.2), an entity indirectly owned and directly controlled by the Erstwhile Promoters. The financial reservoirs of FHL were unwound, as and when the Erstwhile Promoters were in need of money. The funds of the listed entity i.e. FHL were channeled through its wholly owned subsidiary i.e. FHsL through layers of intermediate entities (para 8.6.2), the first layer of which comprised of Best, Fern and Moodland, to reach RHC Holdings. There came a point (between January 2016 to June 2016) when the funds so drawn out of FHsL in the garb of investment through ICDs, never came back. Aggregate amount of Rs. 397.12 Crores (approx.) stood diverted out of the coffers of FHL (para 8.6.3 and para 8.6.5) in the garb of deployment of surplus funds as ICD's. ICD's/loans were given to repay the earlier ICD's/loans (para 8.6.1 and para 8.6.4). Financial statements of FHsL and FHL were misrepresented to show that earlier loans were repaid and fresh loans were given, however, in reality the money given out of the fresh loan was itself used to repay the old loan (para 8.6.4). The shareholders of the listed entity did not even have a whiff about the fraud until February, 2018 when the whistle was blown by a business news portal and the statutory auditor. I note that had the fraud been disclosed in public domain, it would have adversely impacted the price of the scrip of FHL. Thus, I find that because the fraudulent transactions were devised in such a complex manner, investors were induced to remain invested or deal in securities of FHL, under the false market perception which was created by the Noticees. Hence, I find that by engaging in an act/ practice / course of business which operated as a fraud I deceit upon investors dealing in securities of FHL in contravention of the provisions of Regulation 3(d) of PFUTP Regulations, 2003, the Noticees have violated the provision of Section 12A(c) of the SEBI Act, 1992.”

22. The extension of credit facilities in favour of Best, Modland and Fern has been noticed by SEBI in Para 31 of its order which reads as under: -

“31. Now coming to the specific contentions raised by Noticee no. 6 and 7, I note that the Board of directors of FHL in its meeting dated November 14, 2011 constituted an Executive Committee, which approved the loans/ ICDs by FHsL till November 2013. The Executive Committee in its meeting dated September 18, 2013 constituted the Treasury Committee, as a sub-committee of the Executive Committee, among other things, to streamline and facilitate the approval process for investments and borrowings for FHL and its subsidiaries. The Treasury Committee approved the loans/ICD's by FHsL till March 31, 2018. From the material available on record, I note that Noticee no. 6 was member of the Treasury Committee since November 2014 and Noticee no. 7 was associated with the Treasury Committee since September 2015. The following Table shows the details of loans/ICD's approved by Noticee no. 6 and 7, while being part of the Treasury Committee of FHsL:

Date	Borrower	Amount	Details of persons who have approved/ratified the transaction
16/09/2015	Best	200 Crores	Malvinder Mohan Singh, Shivinder Mohan Singh, Gagandeep Singh
26/11/2015	Best	200 Crores	Malvinder Mohan Singh, Shivinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
01/01/2016	Best	200 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh

	Best	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
	Best	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
29/01/2016	Best	100 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
	Best	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
25/05/2016	Best	98 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Best	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
01/07/2016	Best	98 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Best	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Best	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
01/10/2016	Best	98 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
25/11/2014	Fern	250 Crores	Malvinder Mohan Singh, Shivinder Mohan Singh, Aditya Vij, Gagandeep Singh

			Bedi
16/09/2015	Fern	50 Crores	Malvinder Mohan Singh, Shivinder Mohan Singh, Gagandeep Singh Bedi
26/11/2015	Fern	100 Crores	Malvinder Mohan Singh, Shivinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
01/01/2016	Fern	100 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
	Fern	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
	Fern	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
15/03/2016	Fern	80 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
04/04/2016	Fern	75 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Fern	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
04/04/2016	Fern	100 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi

	Fern	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
01/07/2016	Fern	175 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Fern	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Fern	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
01/10/2016	Fern	175 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
25/11/2014	Modland	250 Crores	Malvinder Mohan Singh, Shivinder Mohan Singh, Aditya Vij, Gagandeep Singh Bedi
04/02/2015	Modland	50 Crores	Malvinder Mohan Singh, Aditya Vij, Gagandeep Singh Bedi
	Modland	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
10/02/2016	Modland	125 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
04/04/2016	Modland	100 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Modland	Extension of the	Malvinder Mohan Singh, Gagandeep

		above transaction	Singh Bedi
04/04/2016	Modland	100 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Modland	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
01/07/2016	Modland	200 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Modland	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Modland	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
01/10/2016	Modland	200 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi

I find that fresh ICD's/ loans (which does not include instances of rollover/ extension), amounting to 3124 Crores were positively approved by Noticee no. 6 while being part of the Treasury Committee. Similarly, I also find that fresh I CD's/ loans, amounting to 905 Crores (which does not include instances of rollover/ extension) were positively approved by Noticee no. 7 while being part of the Treasury Committee. I note that the Treasury Committee of FHsL used to conduct its business through circulation of email amongst its members. The approvals were sought for every proposal of investment in ICD's through email. The members of the Treasury Committee used to grant their approval simply by writing words and phrases like 'Ok' or 'Ok with me'. Therefore, I agree with the findings of SEBI investigation that there were no deliberations/discussions on the proposals of investment in the Treasury Committee meetings, let alone any due diligence on the credit profile of the borrowing entities. Noticee no. 6 and 7 have argued that they had relied upon the Desai Haribhakti & Co., Chartered Accountant reports of

2013 and 2016 for understanding the Asset Coverage ratio of the borrowing entities and they found the credit profile of the borrowing entities was satisfactory. I note that if such reports of the Chartered Accountant were indeed relied by the said Noticees, then they ought to have been reflected in the minutes of the meeting of the Treasury Committee or as annexures to the email seeking approval of ICD's in the Treasury Committee. However, I do not find any such mentions anywhere. Further, I note that the financial parameters such as credit rating, asset coverage ratio, net worth, etc., are dynamic and change with every borrowing and repayment by the borrower. As a prudent lending practice, the credit worthiness of the borrower ought to be assessed for every large disbursement proposal, especially for proposals such as 100 Crores and above, which was the regular disbursement amount in this case. From the minutes of the meeting of the Treasury Committee/ email communications of the Treasury Committee, I do not find any such credit evaluation being done by its members. Therefore, the one time report from Desai Haribhakti & Co., which Noticee no. 6 and 7 claimed to have used to understand the credit profile of the borrowers, was merely an eyewash and Noticee no. 6 and 7 miserably failed to assess the credit worthiness of the borrowers for every ICD's that were approved by them.

32. Noticee no. 6 and 7 have contended that they approved the ICD's in the ordinary course of business. It is the case of the said Noticees that surplus funds of FHL were deployed in lucrative interest earning instruments for short term that would help the listed company earn better returns than overnight funds. However, I note that in almost all the ICD's/loans approved by the Treasury Committee during the tenure of the said Noticees, there were corresponding proposals for raising the equivalent amount of funds through issue of commercial paper by FHL in the money market. This fact, effectively runs contrary to the theory of deployment of 'surplus funds' and shows that Noticee no. 6 and 7 were aware of the fraud of the promoters and their continuous approval with deliberate failure to exercise due diligence shows that they were part of the fraud. The funds were raised by FHL and then lent to FHL for further onward lending to the three borrower entities i.e. Best, Fern and Modland. I note that almost every proposal for investment in ICD's mentioned the fact that first money would be raised by FHL in the money market through Commercial Paper and then the same will be lent to FHL for onward deployment with Best, Fern or Modland. And yet Noticee

no. 6 and 7 claim that the ICD's were issued in the regular course of business. Was it the regular course of business for a company involved in the healthcare services segment to earn income from borrowing and lending? Was it not an enough ground for raising suspicion? Thus, the contention by Noticee no. 6 and 7 that they had no occasion to doubt the investment in ICD's of the borrower companies, is not tenable.

34. As revealed in the SEBI investigation, and as laid out in Para 8.6.4 above, I note that, from the first quarter of FY 2016-17 to the first quarter of FY 2017-18, the CD's/loans given to Best, Fern and Mod land during April/May 2016, aggregating to 4 73 Crores, were shown as being repaid at the last day of each quarter and fresh loans/ ICD's were being shown as given at the first day of next quarter. However, in reality no loans/'ICD's were being repaid. Funds were flowing from FHsL to show the repayment of old loans. It was nothing but circular rotation of funds. Such transactions were deliberately entered into to hide the real picture of the financial position of FHsL (effectually that of consolidated financials of FHL), at the end of each quarter, since transactions squared *off* within the same quarter do not get reflected in the quarterly financial results. SEBI investigation has revealed that:

34.1. The amount available in the bank accounts of Modland/ Fern/ Best during the last day of each quarter (i.e. from quarter ending June 2016 to quarter ending June 2017) was insignificant compared to the repayment amount that Modland/ Fern/ Best had to make to FHsL at the end of each quarter.

34.2. Before making the repayment of loan/ ICD to FHsL during the end of each quarter (i.e. from quarter ending June 2016 to quarter ending June 2017), BesU Fern / Modland had received funds from either FHsL itself or through other entities (like Saubhagya Buildcon Pvt Ltd, ANR Securities Pvt Ltd, Ranchem Pvt Ltd, RHC Holding & Torus Buildcon Pvt. Ltd.) and repayment to such entities were made by Modland/ Fern/ Bern, as the case may be, on the same day itself through the funds received from FHsL as ICDs.

34.3. Through these transactions, the position of funds lying in the bank account of FHsL during the period between the end of quarter ending June 2016 to quarter ending June 2017, were artificially inflated as FHsL had recorded receipt of funds in the ledger accounts of Best / Fern / Modland on the last day of each quarter whereas FHsL actually didn't

receive any funds from Best/ Fern/ Modland on the last day of the aforementioned quarters.

34.4. These synchronized transactions also aided FHsL in masking the fact that the short term loans/ ICDs given to Best/ Fern/ Modland were not performing. Since the 3 companies were not able to pay the aforementioned amount of ICDs, these should have been shown as bad debts in the books of accounts of FHsL for the aforementioned 5 quarters. This would have reduced the net profit of FHsL (effectively of FHL) for the 5 quarters. Hence, the profits of FHL were inflated by FHsL for the aforementioned 5 quarters by an amount of Rs. 473 crore.

34.5. Through the aforementioned transactions, the position of 'Cash and Cash Equivalents' as being shown in the Current Assets of the Balance Sheet of FHsL and Consolidated Balance Sheet of FHL, at the end of each of the aforementioned 5 quarters had been artificially inflated by Rs. 473 crores.

35. I note that none of the Noticees herein have disputed the aforesaid findings of the investigation. I find that the position of 'Cash and Cash Equivalents' as being shown in the Current Assets of the Balance Sheet of FHsL (effectively of consolidated FHL) as on September 30, 2016 and March 31, 2017, and net profit of FHsL (effectively consolidated FHL) in the Statement of Profit and Loss for the quarter ended June 2016 to June 2017, is misrepresented. I note that these misrepresentations have resulted in the consolidated financial statements of FHL not reflecting a true and fair view of the financial position and financial performance of FHL, thereby failing to comply with the mandate of para 15 of IndAS 1. I note that Noticee no. 6 and 7 have pleaded innocence about these transactions on the pretext that there was no way by which they could have known the wrongdoings in FHsL, since they were the functionaries in the parent FHL. They have sought reliance on the fact that even the Certificate issued by them for the FY 2016-17 under Regulation 17(8) of LODR Regulations, was only in relation to certifying the 'true and fair view' of the financial statements of FHL and not of FHsL. I do not find any merit in this contention. I note that Noticee no. 6 was the Chief Financial Officer of FHL and non-executive director on the board of FHsL Noticee no. 7 was the Chief Executive Officer of FHL. Both the Noticees were Key Managerial Personnel at FHL. FHsL was the wholly owned subsidiary of FHL. Both the Noticees have presented a Certificate

under Regulation 17(8) of LODR Regulations, before the Audit Committee of FHL, in its meeting dated May 29, 2017, certifying the 'true and fair view' of the Consolidated Audited financial results of FHL (which also includes the results of FHsL) for the FY ended March 31, 2017. If the said Noticees were unaware of the working of the internal control systems w.r.t financial reporting of the subsidiary or even the affairs of the subsidiary per se, then why would they certify that *"the consolidated financial statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading"* or certify that *"these statements together present a true and fair view of the Company's affairs and are in compliance with existing accounting standards, applicable laws and regulations"*? I note that the claims of these Noticees are contrary to the facts at hand. If the said Noticees were so disassociated with the working of FHsL then they would not have issued the aforesaid Certificate in the first place. I also note that Noticee no. 6, being the member of the board of directors of FHsL was even responsible for approving the financials results of FHsL for all the five impugned quarters. In view of the above, I find that the involvement of Noticee no. 6 and 7 in the impugned fraud is conspicuous, let alone their claims about being ignorant."

23. It proceeded further to record damning findings with respect to the role discharged by FHL and FHsL in the following terms: -

42. I note that FHL and FHsL, have contended that they are the victims of the fraud and not the perpetrators of the fraud, thus they ought not to be mechanically penalized for the actions of the Erstwhile Promoters, who have disassociated themselves from the working of the said Noticees and they are no more in control of their affairs. From the submissions of the said Noticees, I find that Noticee no. 8 and 9, have undergone change in control and a change in management. I also note that Noticee no. 8 and 9 have also undertaken several steps to recover the money that were diverted from FHL under the garb of deployment of surplus funds as investment in CD's, by instituting following action against the Erstwhile Promoters and the entities under their control:

42.1. FHL and FHsL issued two demand notices dated November 10, 2018 and December 15, 2018, respectively, seeking recovery of amounts from the Erstwhile Promoters.

42.2. FHsL filed a civil suit before the Hon'ble High Court of Delhi, against the Erstwhile Promoters and the relevant promoter-controlled entities for recovery of the siphoned amounts. In the Civil Suit, FHsL has claimed recovery of total principal amount of Rs. 397.12 Crore (INR Three Hundred Ninety-Seven Crores and Twelve Lakhs only), that has been alleged in the SCN to have been diverted from FHsL to the benefit of the Erstwhile Promoters' related entities.

42.3. Further, on November 10, 2020, FHL filed a criminal complaint bearing diary no. D-2929, against, *inter alia*, the Erstwhile Promoters before the Economic Offences Wing of the Delhi Police for certain illegal transactions / dealings by the Erstwhile Promoters and sought registration of an FIR against them. The Complaint also accuses the Erstwhile Promoters of having orchestrated some of the transactions impugned in the SCN.

43. I find that Noticee no. 8 and 9 are corporate entities, distinct from their shareholders and the persons controlling them. It is true that in case of fraud, the corporate veil of a company, can be lifted to find out the real culprits and the beneficiaries of the fraud, which has been done in the present case. However, it does not mean that the corporate entity is absolutely absolved from its liability for the wrong committed. A corporate entity always acts through human beings controlling its affairs. If it is assumed that only natural persons will be liable for the wrongs of the company then it will run counter to the concept of distinct legal personality of a corporate entity, whose one of the important attribute is that it can sue and be sued in its own separate name. The wrong done by the natural person in the name of the corporate entity can only be taken as a mitigating factor for deciding penalty, monetary or otherwise, to be meted out to the corporate entity and not as an absolving factor. In view of the above, I find that no case is made for issuance of regulatory directions under Section 118(1) of the SEBI Act, 1992 and Section 12A(1) of SCRA Act, 1956, against Noticee no. 8 and 9. However, I note that Noticee no. 8 and 9 have admitted the fact that the financial results of FHsL and consolidated financial results of FHL were indeed misrepresented for the quarter ended June 2016 to June 2017, albeit it is their case that the Erstwhile Promoters are responsible for the same. I note that Regulation 48 of LODR Regulations, specifically imputes the responsibility for compliance with the applicable accounting

standards on the listed entity. I also note that misrepresentation of consolidated financial results of FHL has lead to non-compliance of para 15 of IndAS 1 by FHL which has further lead to violation of Regulation 48 of LODR Regulations. I note that FHL as a listed entity was mandated under Regulation 4(1) of LODR Regulations, to discharge its disclosure obligations under the LODR Regulations, 2015, in accordance with the following principles:

4. Principles Governing Disclosures and Obligations of listed entity:

1. The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

a. Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

b. The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

c. The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

d. The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.

e. The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

f. Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by investors.

g. The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

h. The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.

i. Filings, reports, statements, documents and information which are event based or are filed periodically shall contain relevant information.

j. Periodic filings, reports, statements, documents and information reports shall contain information that shall enable investors to track the performance of a listed entity over regular intervals of time and shall provide sufficient information to enable investors to assess the current status of a listed entity.

44. I find that, by misrepresenting the consolidated financial statements of FHL for five consecutive quarters, FHL has also failed to adhere to the principles enshrined in Regulation 4(1) of LODR Regulations, more specifically violating the principles stipulated under Regulations 4(1)(a), 4(1)(b), 4(1)(c), 4(1)(d), 4(1)(h), 4(1)(i), 4(1)(j) of LODR Regulations. I also note that by failing to disclose the fraud to the stock exchange, which was a material event, FHL has also violated Regulation 30(1) of LODR Regulations and Clause 49(I)(C)(1)(a) {post amendment dated April 17, 2014} of the Erstwhile Listing Agreement read with Regulation 103 of LODR Regulations.

52. I note that role of Noticee no. 1 to 7, in the diversion of funds from FHL and FHsL, wherein they were the person in control of affairs of FHL and also the indirect owner and direct controller of RHC Holdings (the ultimate beneficiary of diversion of funds) was ubiquitous. I note that vide the directions in the Interim Order and Confirmatory Order, Noticee no. 8 and 9 have already been directed to take all necessary steps to recover the amount of Rs. 403 Crore (approx.) alongwith due interest from Noticee no. 1 to 5, Best, Fern and Mood land. I note that Noticee no. 8 and 9 have instituted Civil and Criminal proceedings (more specifically mentioned at para 42, above) against the aforesaid entities. Therefore, I find that steps for recovery of diverted amount, have already been put into motion. I also note that on February 8, 2018, the Erstwhile Promoters, who, by virtue of being the Executive Chairman (Noticee no. 2) and the Non-Executive Vice-Chairman (Noticee no. 3) of FHL, were in control of FHL, resigned from the Board of Directors of FHL with immediate effect. Further, by February 28, 2018, the cumulative shareholding of the Erstwhile Promoters in FHL, held through their shareholding in Fortis Healthcare Holdings Private Limited, had reduced below one percent (1 %). Noticee no. 2 and 3 have also been de-classified as 'promoters' of FHL from June 3, 2019. I

note that there has been a change in control of Noticee no. 8 and 9 and the new management has initiated steps for recovery of diverted amounts. Though Noticee no. 2 and 3 are now not associated with Noticee no. 8 and 9, however, at the time of impugned transactions they were in-charge of and were responsible to Noticee no. 9 and RHC Holding for the conduct of the business of Noticee no. 9 (i.e. source of fund) and RHC Holding (i.e. beneficiary of fund). Therefore Noticee no. 2 and 3 were instrumental in the diversion of funds through mechanism of ICDs, therefore, these directors should be debarred from the securitiesmarket till the money is recovered. In view of the aforesaid violations committed by the Noticee no. 1 to 7, I find that directions under Sections 11 (1), 11 (4), and 11 B (1) of the SEBI Act, 1992 and Section 12A(1) of SCRA, 1956, needs to be issued.”

24. It ultimately proceeded to frame directions and imposed monetary penalties in the following terms: -

“57. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 11 (1), 11 (4), 11 (4A), and 118(1), 118(2) of SEBI Act, 1992 and Section 12A(1) and 12A(2) of SCRA, 1956 read with Section 19 and Section 11 (2)(j) of SEBI Act, 1992 and Rule 5 of the Rules and Rule 5 of the SCRA Rules, direct as under:

- (i) Noticee no. 8 and 9 shall continue to pursue the measures, which have already been put into motion, to recover the amount of Rs. 397.12 Crores (approx.) alongwith the interest from Noticee no. 1, 2, 3, 4, 5, Best, Fern and Medland. The Audit Committee of FHL is directed to regularly monitor the progress of such measures being taken by FHL and report the same to board of directors of FHL at regular intervals;
- (ii) The Noticee no. 2 and 3, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market including as a director or Key Managerial Personnel in a listed company or an intermediary registered with SEBI of any Market Infrastructure Institution, for a period of three (03) years, from the date of coming into force of this order. The prohibition imposed herewith in respect of dealing in

securities, shall not come in the way of facilitating the compliance of direction given in para 57 (i) above;

(iii) Noticee no. 2 and 3 shall continue to remain restrained from accessing the securities market and be prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market, for a period of three years, as directed in para 57(ii) above, or till Noticee no. 8 and 9, recover the money, as directed in para 57(i), whichever is later.

(iv) Noticee no. 1 to 5 shall not dispose of or alienate any of their assets or divert any funds except for facilitating the compliance of direction given to Noticee no. 8 and 9, in para 57 (i) above.

(v) The Noticee no. 1, 4, 5, 6 and 7, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two (02) years, from the date of coming into force of this order;

(vi) The Noticee no. 1, 2, 3, 4, 5, 6, 7, 8 and 9, are hereby imposed with, the penalties, as specified hereunder:

Noticee No.	Name of Noticees	Provisions under which penalty imposed	Penalty Amount (in Rupees)
Noticee no.1	RHC Holding Priavte Limited	Section 15HA of the SEBI Act, 1992	Rs. 2,50,00,000/- (Two Crores Fifty Lakh Only)
Noticee no.2	Mr. Malvinder Mohan Singh	Section 15HB of the SEBI Act, 1992	Rs. 5,00,00,000/- (Rupees Five Crores only)
		Section 15HA of the SEBI Act, 1992	
Noticee no.3	Mr. Shivinder Mohan Singh	Section 15HB of SEBI Act, 1992	

		Section 15HA of the SEBI Act, 1992	Rs. 5,00,00,000/- (Rupees Five Crores Only)
Noticee no. 4	Malav Holdings Priavate Limited	Section 15HA of the SEBI Act, 1992	Rs. 2,50,00,000/- (Two Crores Fifty Lakh Only)
Noticee no. 5	Shivi Holdings Priavate Limited	Section 15HA of the SEBI Act, 1992	Rs. 2,50,00,000/- (Two Crores Fifty Lakh Only)
Noticee no.6	Mr. Gagandeep Singh Bedi	Section 15HA of the SEBI Act, 1992	Rs. 2,50,00,000/- (Two Crores Fifty Lakh Only)
		Section 15HB of SEBI Act, 1992	
Noticee no.7	Mr. Bhavdeep Singh	Section 15HA of the SEBI Act, 1992	Rs. 2,50,00,000/- (Two Crores Fifty Lakh Only)
		Section 15HB of SEBI Act, 1992	
Noticee no.8	Fortis Hospitals Limited	Section 15HA of the SEBI Act, 1992	Rs. 50,00,000/- (Rupees Fifty Lakhs Only)
Noticee no.9	Fortis Hospitals Limited	Section 15HA of the SEBI Act, 1992	Rs. 1,00,00,000/- (Rupees One Crore Only)
		Section 15HB of SEBI Act, 1992	

25. It was in the aforesaid backdrop that Mr. Vashisht had contended that since FHsL itself had been wronged and losses were incurred by it at the behest of individuals in control, it had every right

to stake a claim over the money which is presently held in deposit with the Court. It was further urged by Mr. Vashisht that while a claim on similar lines had been addressed at an earlier stage of these proceedings, the order passed on the same would not detract from its right to stake its claim over the deposits which are presently held by this Court. The aforesaid submission was addressed in the background of an order dated 15 October 2020 passed in these proceedings.

26. It would be relevant to note that FHsL is stated to have moved E.A. 815/2020 in these proceedings contending that since the finances provided to Best, Modland and Fern had been misappropriated for the benefit of RHC, it had a right of recourse against J.D. nos. 1, 6, 15, 16, 17 and 19. It had, accordingly, sought impleadment in the proceedings. The various findings which came to be ultimately recorded by SEBI in its aforesaid orders were also pressed into aid. While dealing with the aforesaid issue, the Court in its order of 15 October 2020 had observed as under: -

“21. While deciding this issue, due regard has been paid to the submissions of FHsL in E.A. 815/2020 which has raised the grievance that in the light of the inter-corporate deposits/loans it extended to M/s Best Healthcare and JD Nos. 16 and 17 on 01.07.2017, which were subsequently misappropriated in various ways to benefit JD-19, it also has a right to the assets of JD Nos. 1,6,15,16,17 and 19 and deserves to be impleaded in EA 625/2020. FHsL has relied on the orders passed by SEBI to substantiate these allegations of misappropriation, and claims that since the subject property is owned by JD-19, who is the wrongdoer, any proceeds obtained from the sale thereof by auction, ought to be retained till the civil suit it has instituted for recovery of its, outstanding dues is finally decided. FHsL has also claimed that the sale proceeds may be utilized later, under directions of the Court, to recover the amounts owed to it by JD-19. Having examined the orders dated 17.10.2018 and 19.03.2019

passed by SEBI, I find that even if FHsL has a valid claim against the JDs, "the same still needs to be adjudicated by this Court in CS(OS) 468/2019. As on date, there is no valid decree in favour of FHsL, and therefore it cannot claim any precedence over the claim of YBL or even the DH. On the other hand, as discussed thus far, the subject property which Stands mortgage in favour of the Bank, on a prior date by way of specific mortgage to that effect, cannot be claimed by any other party for the purpose of discharging other obligations of the JDs and nothing turns on these objections. I, therefore, find no reason to implead FHsL/in E.A. 625/2020 or accept their prayer for retention of the sale proceeds from auction, to secure their interests."

27. Before closing the recordal of submissions which were addressed on behalf of FHsL, the Court also deems it apposite to briefly notice the nature of the suit which has come to be instituted by it. FHsL is stated to have instituted the aforesaid suit for recovery of monies in CS(Comm) No. 468/2019. The position of the defendants arrayed in that suit is as under: -

“

1. M/s Fortis Hospitals Limited, A company incorporated under the provisions of Companies Act, 1956, having its registered office at Escorts Heart Institute and Research Centre, Okhla Road, New Delhi-110025

Eniail ID: secretarial@fortishealthcare.com ...Plaintiff

Versus

1. M/s Best Healthcare Private Limited Having its registered office at 106, 1st Floor, Surya Kiran Building, 19, K. G. Marg, New Delhi-110001

And also at:

Office No. 103-B, Ground Floor, Plot No. 45-A, Amar Plaza, Hasanpur Main Road, I.P. Extension, New Delhi-110092

Email ID: besthealthcare@besthealthcare.CO.in

... Defendant No. 1

2. M/s Fern Healthcare Private Limited, Having its registered office at 106, 1st Floor, Surya Kiran Building, 19, K. G. Marg, New Delhi -110001
And also at:
Office No. 103-B, Ground Floor,
Plot No. 45-A, Amar Plaza,
Hasanpur Main Road, LP.
Extension, New Delhi 110092
Email ID: fem.healthcare@gmail.com

....Defendant, No. 2

3. M/s Modland Wears Private Limited Having its registered office at 106, 1st .Floor, Surya Kiran Building,
19, K. G. Marg, New Delhi - 110001
And also at:
Office No. 103-B, Ground Floor,
Plot No. 45-A, Amar Plaza,
Hasanpur Main Road, LP.
Extension, New Delhi-110092
Email ID:mbdland.wears@gmail.com

...Defendant No.3

4.RHC Holdings Private Limited
Prius Platinum, Ground Floor, D3,
District Center, Saket, New Delhi
110017
And also at:
G-16, Marina Arcade, Connaught
Circus, New Delhi-110001
Email ID: contact@rlicholding.com

.... Defendant No.4

5.Shivi Holdings Private Limited
Prius Platinum, Ground Floor, D3,
District Center, Saket, New Delhi
110017
And also at:
G-16, Marina Arcade, Connaught

Circus, New Delhi-110001
Eniail ID: shivi.hold@gmail.com

.... Defendant No.5

6.Malav Holdings Private Limited
Prius Platinum, Ground Floor, D3,
District Center, Saket, New Delhi
110017

And also at:

G-16, Marina Arcade, Connaught
Circus, New Delhi-110001

Email ID: malav.hold@gmail.com

.... Defendant No.6.

7.Malvinder Mohan Singh S/o. Late
Parvinder Singh

R/o. 26, Mauisari Avenue,
Westend Greens, Rajokari New
Delhi- 110038 '

And also at:

54, Janpath , Connaught Place, New
Delhi 110001

Email ID: N/A

....Defendant No. 7

8.Shivinder Mohan Singh, S/o. Late
Parvinder Singh R/o, C- 10, South
Extension Part- . II, New Delhi^
110049

Email ID: N/A

... Defendant No.8

9. Religare Finvest' Limited, 2'nd
Floor, Rajlok Building, 24, Nehru
Place, New Delhi 110019
Email ID; customerservice@religare.com

... Defendant No.9.

10. M/s Fortis Healthcare Limited, A
company incorporated under the
provisions of Companies Act, 1956,
Having its registered office at Fortis
Hospital, Sector -62, Phase VIII,
Mohali, Punjab-160062
Email ID: reachus@forishealthcare.com.

...DefendantNo.10

28. The reliefs which are claimed and since those would have some bearing on the issues which confront the Court in the present proceedings are also extracted hereinbelow:-

- “a. Pass a decree in favour of the Plaintiff, directing Defendant Nos. 1 to 9 to jointly and severally pay to the Plaintiff a sum of INR 520,19,79,346 (INR Five Hundred and Twenty Crores Nineteen Lakhs Seventy Nine Thousand Three Hundred and Forty Six) along with pendente - lite and future interest at the rate of 18% per annum;
- b. Order costs of the suit; and
- c. pass such other and further relief(s) as this Hon'ble Court may deem fit in the circumstances of the case.”

It becomes significant to note that the relief for recovery of monies while made against the various defendants arrayed therein does not extend to FHL.

29. After proceedings had commenced on the present application, IHFL also chose to file objections opposing the release of monies as sought by Daiichi. Appearing for IHFL, Mr. Kirpal, learned senior counsel, contended that various loans had been extended by it to RHC, **R.S. Infrastructure Private Limited**¹⁹ and **Torus Buildcon Private Limited**²⁰. While RHC stands arrayed as J.D. no.19, the other two entities are not parties before the Court in these proceedings. These too were entities stated to be controlled by MMS and SMS. It was contended that IHFL and **Indiabulls Ventures Limited**²¹ over a period of time extended various loans to the aforementioned three entities

¹⁹ R.S. Infrastructure

²⁰ Torus Buildcon

²¹ IVL

amounting to approximately INR 1386 crores. Mr. Kirpal pointed out that the repayment of the aforesaid loans was secured by way of the Personal Guarantees executed by MMS and SMS, pledge of 50 lakh shares held by RHC in Religare Enterprises Ltd., pledge of 16 lakh shares of RHC Finance Pvt. Ltd. in Religare Enterprises as well as a pledge agreement dated 03 December 2016 in respect of 2,27,10,980 shares of FHL pledged by FHHPL and various other pledge agreements details whereof have been set forth in paragraph 7 of its reply. Mr Kirpal further submits that even after the sale of the encumbered shares and mortgaged properties in relation to the loans, an amount in excess of INR 616 crores is due and outstanding.

30. IHFL also asserts that no shares which came to be pledged were encumbered in its favour post 11 August 2017. IHFL contends that the Supreme Court while passing its orders of 15 November 2019 as well as 22 September 2022 has not adjudicated upon the right or title of IHFL over the FHL shares which were sold. Mr. Kirpal contended that the pledge of the FHL shares were in connection with legitimate loans granted by IHFL to the three entities noticed above. It was also submitted by Mr. Kirpal that as distinct from IHFL, Daiichi is not a secured creditor and thus cannot claim any right which may be construed as being superior to IHFL over the monies held in deposit. Mr. Kirpal submitted that the deposit of the amounts garnered from the sale of 12,25,000 shares in the course of IHFL seeking to purge the contempt which had been committed does not mean that it loses its right to assert its claim over those monies. It was lastly urged by Mr.

Kirpal that the order of 22 September 2022 itself requires this Court to determine all questions including the right and interest of IHFL in the shares of FHL. According to Mr. Kirpal, this itself would be indicative of the Court necessarily examining the claim of IHFL on merits.

31. The submissions addressed on behalf of FHsL and IHFL were opposed by Mr. Nigam learned senior counsel appearing for the execution petitioner who contended that both the objectors essentially seek a retrial of issues which stand concluded by virtue of the orders of the Supreme Court. Mr. Nigam argued that the money presently held in deposit owes its genesis to the sale of shares by IHFL in contravention of the assurances made before this Court as well as the orders passed by the Supreme Court. It was Mr Nigam's contention that the actions of the contemnors clearly establishes that these statements were made with no intention of complying with them and that the contemnors had already prepared a well thought out scheme of diluting their shareholdings directly or indirectly held in FHL to defeat the rights of the petitioner. According to Mr. Nigam, it was for this purpose that those shares stood sequestered solely for the purposes of satisfaction of the Award handed down in favour of Daiichi.

32. It was the submission of Mr. Nigam that while FHsL may have been granted a right of recourse against parties identified by SEBI, in the absence of any decree or judgment having been drawn or rendered in its favour, it could claim no right over the monies held in deposit by this Court. Mr. Nigam further asserted that the prayers made by FHsL

are wholly untenable bearing in mind the fact that an identical claim had come to be rejected by this Court in terms of its order dated 15 October 2020. Mr. Nigam submitted that no crystallised liability presently exists on the basis of which FHsL could justifiably stake a claim over the deposit or seek a restraint against its release in favour of Daiichi.

33. Turning then to the objection filed by IHFL, Mr. Nigam submitted that the same must be outrightly rejected being in sheer abuse of the process of court. It was his submission that the stand as taken by IHFL is clearly outrageous bearing in mind the clear findings of guilt which came to be recorded against it by the Supreme Court. Mr. Nigam contended that once IHFL had accepted the decision rendered by the Supreme Court and had made the deposit in order to purge the contempt which was found to be established, it would be wholly impermissible for it to seek a reopening of the said issues.

34. Having noticed the submissions which were addressed, this Court deems it necessary to encapsulate the essential facts relating to the sale of shares, diversion of funds and the misutilization thereof through a maze of interconnected corporate entities as they stand duly captured and encapsulated in the orders of 15 November 2019 and 22 September 2022 passed by the Supreme Court.

35. In its original order of 15 November 2019, the Supreme Court had firstly taken note of as many as five undertakings which had been proffered on behalf J.D. nos. 14 and 19 that the amount payable to Daiichi in terms of the Award stood duly secured and that the

apprehension expressed by it that the assets of the respondents were being diluted was misplaced. Apart from the five undertakings which came to be recorded by this Court, the Supreme Court itself had provided in terms of its order of 11 August 2017 that status quo would be maintained with regard to the shareholding of FHHPL in FHL. The aforesaid order was again clarified on 31 August 2017 with the Supreme Court observing that the aforesaid order of restraint was intended to extend to both encumbered as well as unencumbered shares of FHL held by FHHPL. The orders of 11 and 31 August 2017 were thereafter clarified by the Supreme Court on 15 February 2018 with it being observed that the status quo would not apply to any encumbrances created upon shares prior to the passing of the two interim orders noticed above. The aforesaid order was continued and was directed to remain operative till this Court were to decide the matter finally.

36. Proceeding to take note of the facts surrounding the sale of the 12,25,000/- shares, the Supreme Court found that a comparison between the shareholding as it existed in August 2017 with that of the holding pattern in September 2017 would make it evident that there was a sudden and significant drop in the shareholding of FHHPL in FHL. It also noted that apart from the aforesaid, although 30,59,260 shares were shown to be pledged on 14 August 2017, an additional 3,26,24,180/- shares came to be encumbered or transferred during the aforesaid period. Scrutinising the period between 01 July 2018 to 30 September 2018, it observed that although IHFL, had asserted that

12,25,000/- shares stood pledged with them, no disclosures had been made by the contemnors as to when and at what stages different pledges came to be created. It also took note of the contention of IHFL which had asserted that since the value of the pledged shares held by it fell in the market, to make the security equal to the amount outstanding further share transfers were affected by IVL to IHFL on the basis of various pre-signed and delivery instruction slips. The said contention was stoutly and categorically rejected with the Supreme Court observing that the same would also amount to a violation of its orders passed from time to time.

37. The Supreme Court categorically observed that its order of 11 and 31 August 2017 clearly debarred FHHPL from changing its shareholding in FHL. Those orders, it was noted, came to be clarified only on 15 February 2018 when the Supreme Court had observed that the order of status quo would not impact shares which may have been encumbered prior to 11 and 31 August 2017. On a conjoint reading of the three orders, it ultimately observed that no unencumbered shares could have been charged after 11 and 31 August 2017. It was submitted that even if FHHPL had executed documents empowering IVL to transfer shares from its DEMAT account to top up the security value, that too could not have been used to violate the orders of the Supreme Court. It was significantly observed that the restraint which operated, and which restricted FHHPL from diluting its holding in FHL, could not have been circumvented by its agent or attorney.

38. The Court also deems it apposite to note that the Supreme Court had also noticed in Para 22 of the order of 15 February 2018 that RHC had asserted that it had duly informed IHFL of the status quo orders passed by the Supreme Court in terms of its communications of 16 and 31 August 2017. It had observed that contrary to the material placed on the record and despite IHFL being fully aware of the restraint orders issued by the Supreme Court, it had proceeded to transfer 6,00,000 shares of FHL held by FHHPL. It also noticed the stand of RHC as expressed before it and which too had asserted that when it learnt about those transfers, it had duly and promptly informed IHFL that the same would amount to a violation of the orders passed by the Supreme Court. It observed that despite the aforesaid communications, IHFL continued to transfer shares of FHL held by FHHPL on 11, 12, 14, 17 and 18 September 2018. It was only on 24 September 2018 that IHFL informed the Supreme Court of the transfer of 12,25,000 shares of FHL held by FHHPL. Not only that, the Supreme Court has also recorded that even after the said date, on 29 September 2018 IHFL undertook another transaction of transfer of 9,04,760 shares. It ultimately proceeded to categorically hold that IHFL had acted in flagrant violation of the orders of the Supreme Court. It held that there can be no manner of doubt that both IHFL and IVL had violated the orders and, therefore, were guilty of contempt.

39. Dealing then with the conduct of MMS and SMS, it observed that both acting in their individual capacities as well as directors of

RHC and OIL, had committed contempt of court and had knowingly violated the injunction which operated and restrained them from diluting the shareholding of FHHPL in FHL. It also took cognizance of the fact that by the time it came to draw the order of 15 November 2019, FHHPL practically owned no shares in FHL at all and the shareholding had been transferred to IHH Healthcare Berhad through its subsidiary Northern T.K. Venture Pte Ltd. by way of allotment of preferential shares. It also held that the aforesaid two individuals contemptuously and in implementation of a sinister design, increased the authorised capital of FHL with the sole objective and purpose of transferring a controlling interest in the company. It proceeded to ultimately record that MMS and SMS had knowingly and wilfully changed the shareholding of FHHPL in FHL. The Court then proceeds to notice some of the salient findings which are recorded in the order of 22 September 2022.

40. The Court noted that insofar as MMS and SMS were concerned, the Supreme Court in its order of 15 November 2019 had elaborately ruled upon their conduct and how they with clear intent took steps to circumvent and overcome the orders passed by courts in connection with the enforcement of the Foreign Award. The order of 22 September 2022 was essentially concerned with the allegation of a violation of the order dated 14 December 2018 which had provided for status quo being maintained with respect to the sale of a controlling stake in FHL to Malaysian IHH Healthcare Berhad. It was however informed that IHH Healthcare Berhad had taken over FHL

pursuant to a preferential allotment of shares and which exercise stood completed prior to the passing of the order of 14 December 2018. The Court in this order also noticed the contention of various banks and financial institutions which had contended that they had entered into bona fide transactions and thus no foul play could be attributed upon them. All issues connected with the aforesaid assertion of banks and F.I.s' including a forensic audit being undertaken has been left open to be considered by the Court in the present execution proceedings.

41. In order to accord clarity to the questions which arise, it would be expedient to notice in some detail the two separate streams of transactions which arise insofar as FHsL and IHFL are concerned. While the FHsL transactions relate to the extension of ICDs' in favour of Best, Modland and Fern, the IHFL transactions pertain to the loans extended to RHC, Torus Buildcon and R.S. Infrastructure Limited. Those loan transactions assume significance in light of the security which was provided to IHFL in the shape of shares of FHL being pledged by FHHPL.

42. The transactions relating to the ICDs' may firstly be considered. As is recorded by SEBI in its order of 17 October 2018, FHsL had extended various short term loans to Best, Modland and Fern. It further observed that Best, Modland and Fern had immediately or in close proximity to the receipt of the loans transferred the same to its promoter related entities, RHC and Religare Enterprises Limited. SEBI further proceeds to record that out of the aforementioned short-term loans, two loans given by FHsL to Best and Fern totalling a sum of

Rs. 100 crores and which monies had been passed on to Religare Enterprises Limited had not been repaid. In light of the aforesaid facts, it came to conclude that the loans extended by FHsL to Best, Modland and Fern was to serve the sole purpose of making funds available to promoters and related entities.

43. The outstanding amounts payable by Best, Modland and Fern as on 31 May 2018 was detailed as under:-

- (14) From F.Y. 2011-12 to F.Y. 2017-18, numerous transactions were observed between FHsL and the below mentioned entities (Best, Fern and Modland) relating to granting of ICDs and receipt of repayment & interest. The outstanding principal amount of the ICDs with each one of them as on 31st May 2018 is given in table below:

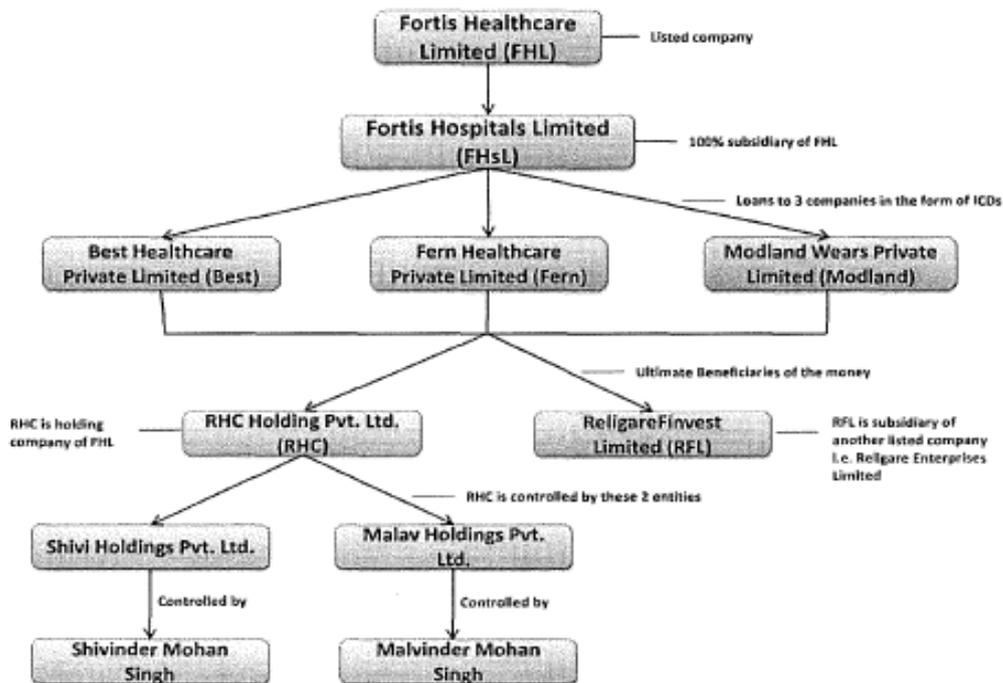
Name of the borrower entity	Principal Amount Outstanding as on 31/5/2018 (in Rs. crores)
Best Healthcare Private Limited	98.00
Fern Healthcare Private Limited	105.00
Modland Wears Private Limited	200.00
Total	403.00

44. SEBI then went further to note and record the ultimate utilisation of the loans extended to Best, Modland and Fern and captured the following details:-

- (16) Based on the above, the summary of ICDs amount still outstanding and their ultimate utilization is shown in table below:

ICD issued to	Principal Amount (in Rs. crores)	Ultimate Utilization
Best Healthcare Private Limited	98.00	Used by RHC Holding to pay off its debt to India Bulls Mutual Fund
Fern Healthcare Private Limited	105.00	Used by RHC Holding to pay off its debt to HDFC Limited
Modland Wears Private Limited	100.00	Paid to Religare Finvest Limited
	100.00	Paid to Religare Finvest Limited
TOTAL	403.0	

45. It also explained the movement of funds by way of a flowchart which is extracted hereinbelow: -



”

46. It ultimately proceeded to record its prima facie conclusion that FHL and FHsL had indulged in wrongful diversion of funds using Best, Modland and Fern as conduits so as to ultimately place funds in the hands of RHC and Religare Enterprises Limited for the ultimate benefit of various entities detailed in that order including Shivi Holdings Private Limited noticee no. 5, and Malav Holdings Private Limited, noticee no. 4 before SEBI. Although Shivi Holdings does not stand arrayed as a judgement debtor in the present proceedings, Malav is positioned as Judgement Debtor no.15, MMS, noticee no. 6, is judgement debtor no.1 and SMS, noticee no. 7, before SEBI is judgement no.6 in these proceedings.

47. On the basis of the aforesaid findings, SEBI framed directions calling upon FHL to take necessary steps for recovery of the amount of Rs. 403 crores along with due interest from FHsL, RHC, Shivi Holdings Private Limited, Malav Holdings Private Limited, MMS and SMS, Religare Enterprises Limited, Best, Modland and Fern.

48. In terms of its modified directions, the direction to effect recovery and all obligations connected therewith were placed jointly upon FHL and FHsL. In its final order of 19 March 2019, SEBI revisited the issue of loans and ICDs' and the diversion of funds from FHsL to Best, Modland and Fern. It traced in great detail the movement of funds by way of the grant of ICD facilities for the period Financial Years 2011-2012 to 2015-2016 as well as the misrepresentation transactions which occurred in Financial Year 2017-2018. It in paragraph 8.6.5.2 of its order observed that Rs. 466 crores approximately was diverted from FHsL through Best, Modland and Fern for the ultimate benefit of RHC during the period falling between January, 2016 to May, 2016. Insofar as the misrepresentation transactions were concerned, it noted in paragraph 8.7 of the final order that funds amounting to Rs. 397.12 crores appear to have been diverted from FHsL for the benefit of RHC Holding through Best, Modland and Fern and ultimately for the benefit of MMS and SMS.

49. In paragraph 17.4 of the final order, SEBI held that funds aggregating to Rs. 397.12 crores had been diverted under the garb of investments through ICDs' from FHL to RHC with the funds being moved through FHsL. While its ultimate conclusions have already

been extracted hereinabove, it may only be recalled that both FHL and FHsL were directed to continue to pursue proceedings for recovery of the amount of Rs. 397.12 crores along with interest from RHC, MMS, SMS, Malav Holdings Private Limited, Shivi Holdings Private Limited, Best, Modland and Fern.

50. That then takes the Court to briefly notice the issues which arise from the pledge of shares as security in connection with the credit facilities extended by IHFL to the borrower companies. As per the disclosures made by IHFL in these proceedings, it has stated that in its ordinary course of business, it had granted loans to RHC, R.S. Infrastructure and Torus Buildcon, all entities controlled by MMS and SMS, of a total principal amount of INR 1386 crores. The aforesaid amounts are stated to have been granted in terms of eleven separate loan agreements.

51. The pledge of FHL shares by FHHPL is stated to have occurred in connection with the aforesaid credit facilities extended by IHFL. IHFL further discloses that in respect of 30,59,260 shares, the Supreme Court in its order of 31 August 2017 had noted that its order of 11 August 2017 was intended to cover both encumbered as well as unencumbered shares of FHL held by FHHPL and consequently, no transfer was permissible.

52. According to IHFL in respect of 21,29,760 pledge shares, the Supreme Court on 15 November 2019 had required IHFL to deposit the value of 12,25,000 shares as per the price prevailing on 31 August

2017. It is in connection with the aforesaid that the deposit ultimately came to be affected on 18 December 2019. IHFL refers to the loan agreements of 30 November 2016 as well as the pledge agreement of 03 December 2016 to contend that the pledge of FHL shares by FHHPL was made in connection with the aforesaid credit facilities. For the sake of completeness of the narration, the Court deems it apposite to extract the clause pertaining to the pledge/charge of shares as embodied in the loan agreement of 30 November 2016 and the same is extracted herein below:-

“d) Pledge/Charge of Shares

At all times during the validity of the Loan Documents, the Borrower(s) shall cause to be forthwith created a first-ranking pledge/charge exclusively in favour of the Lender on agreed percentage (as specified in Schedule I hereunder) of the (present and future) shares, securities, instrument(s) convertible into shares and/or instrument(s) with voting rights issued/to be issued by the company/companies mentioned in Schedule IV hereunder and in this regard, the Borrower(s) shall cause the (present and future) holders of such shares, securities and/or the said instruments of such company/companies to forthwith execute a pledge/charge agreement, other documents and a Power of Attorney in the form and substance satisfactory to the Lender. Further, without prejudice to the aforesaid, the Borrower(s) shall cause the Pledgor(s) to forthwith create a first-ranking pledge/charge on the Pledged/Charged Shares exclusively in favour of the Lender and/or any of its agent/nominees/trustees, including all shares/securities lying in, and/or shares/securities

which has been credited/ shall be credited from time to time in the Pledgor(s)' Demat Account(s) mentioned in the Schedule IV to this Agreement and in regard of which the Borrower(s) shall cause the Pledgor(s) to execute a pledge/charge agreement, other documents and a Power of Attorney in the form and substance satisfactory to the Lender. The Demat Account(s) shall be opened by the Pledgor(s) with a depository participant(s) as approved by the Lender.”

53. The details of the pledge/charged shares was set forth in Schedule IV which is extracted hereinbelow:-

“SCHEDULE IV
DETAILS OF PLEDGED/CHARGED SHARES”

S.No	Name of the Pledgors (s)	No. Of Pledged/Charged Shares	Type/Class/Category of Pledged/Charged Shares	Name of the Issuer Companies	Demat Account (s) Number	DP ID	Client ID
1.	Fortis Healthcare Holdings Pvt. Ltd.	6,64,00,000	Equity Shares	Fortis Healthcare Limited	IN302236 - 12393088	IN302236	12393088
2.	RHC Holding Pvt. Ltd.	90,00,000	Equity Shares	Religare Enterprises Limited	IN302236 - 12393096	IN302236	12393096
3.	RHC Finance Pvt. Ltd.	64,00,000	Equity Shares	Religare Enterprises Limited	IN302236 - 12393107	IN302236	12393107

54. As would be evident from Schedule IV of the said agreement, FHHPL, RHC and RHC Finance Private Limited are stated to have

pledged shares as security for the repayment of the loans extended by IHFL. Thus, it is manifest that while FHsL refers to the loan agreements executed by Best, Modland and Fern and the corresponding statutory charges created upon their existing and future assets, the case of IHFL turns upon the loans extended to the three entities noticed above and the connected pledge of FHL shares by FHHPL as security in relation thereto.

55. While dealing with the pledges which are stated to have been created in favour of IHFL, the Supreme Court in its order of 15 November 2019 has made the following significant observations: -

“21. The main issue is whether these 12,25,000 shares were pledged prior to 11.08.2017 or not. At this stage it would be pertinent to mention that the stand of IHFL that no pledge was created after 11.08.2017 is incorrect. The disclosure made on 21.08.2017 by FHHPL to BSE and NSE clearly discloses that 30,59,260 shares of FHL held by FHHPL were pledged on 14.08.2017 in favour of IHFL. This disclosure of 21.08.2017 is a part of the record and not specifically denied by IHFL.

22. We may point out that till October 2017, IHFL was not represented in this Court. However, on 16.08.2017 and 31.08.2017 through emails RHC informed IHFL about the status quo order passed by this Court. Thus, IHFL cannot claim that they were not aware of this Court’s orders. However, from the material on record especially the replies filed by OIL, RHC, MMS and SMS it is apparent that on 06.09.2018, 07.09.2018, 08.09.2018 IHFL transferred 6,00,000 shares of FHL held by FHHPL. When RHC came to know about these transfers, it immediately informed IHFL that transfers were in violation of the orders passed by this Court on 11.09.2017. Despite the communication dated 11.09.2018, IHFL continued to transfer shares of FHL held by FHHPL on 11.09.2018, 12.09.2018, 14.09.2018, 17.09.2018 and 18.09.2018. On 24.09.2018, this Court was informed that

IHFL had transferred 12,25,000 shares held by FHHPL in FHL in violation of the Court's orders. As on 29.09.2018, another transaction of 9,04,760 shares had taken place. The main issue is whether 12,25,000 shares were encumbered or not.

23. FHL is a public company and being a listed company, it has to disclose its shareholding patterns to the stock exchange. A chart showing share holding pattern of FHHPL in FHL will show the position of holdings at various stages:

S. No.	Quarter Ending	Total Share	Encumbered Shares	Unencumbered Shareholding of FHHPL in FHL
1.	September 2016	32,50,91,529	27,21,59,955	5,29,31,574
2.	December 2016	32,50,91,529	25,22,63,248	7,28,28,281
3.	28 th Jan 2017	32,50,91,529	25,19,23,248	7,31,68,281
4.	March 2017	27,02,41,529	23,18,01,440	3,84,40,089
5.	June 2017	22,22,11,701	18,38,96,484	3,83,15,217
6.	September 2017	17,80,26,597	17,53,94,820	26,31,777
7.	December 2017	17,80,26,597	17,53,94,820	26,31,777
8.	March 2018	34,20,451	6,89,084	27,31,367
9.	June 2018	32,82,851	5,51,484	27,31,367
10.	September 2018	11,53,091	5,51,484	6,01,607
11.	December 2018	11,53,091	5,51,484	6,01,607

It is true that we have to decide whether there is any disobedience of the orders of this Court, but while doing so we will make reference to the proceedings before the Delhi High Court and the above chart to show how both sets of respondents

have violated the orders of the courts. As pointed above, on 19.06.2017 learned counsel for OIL and RHC had made a statement before the Delhi High Court that the status of unencumbered assets as disclosed to the court would not be changed and the shareholding as disclosed in terms of order dated 06.03.2017 shall not be affected. When the petitioner felt that this order is not being complied with, it filed contempt petition in the Delhi High Court. Within two days another order was passed by the Delhi High Court on the basis of the undertaking given to it.

24. The above chart would show that in the quarter ending June 2017, the total shares held by FHHPL in FHL were 22,22,11,701 and the encumbered shares were 18,38,96,484. Only 3,83,15,217, were unencumbered.

25. This Court on 11.08.2017 directed that status quo with regard to shareholding of FHHPL in FHL be maintained. On 31.08.2017 it was clarified that the order would apply to both encumbered and unencumbered shares. On 14.08.2017, 30,59,260, unencumbered shares were pledged in favour of IHFL. As far as this violation of the order dated 11.08.2017 is concerned, in view of the order dated 31.08.2017, the same stands condoned. This would further mean that the unencumbered shares should have been reduced to 3,52,55,957.

26. However, the figures of September 2017 show a totally different situation. The total shareholding has fallen to 17,80,26,597 and the unencumbered shares to 26,31,777. This means that in addition to 30,59,260 shares pledged on 14.08.2017, 3,26,24,180 number of shares were encumbered or transferred during this period. There is no explanation by OIL, RHC, MMS or SMS, as to how these unencumbered shares were encumbered or transferred in total violation of the orders of the courts.

27. We shall now deal with the issue as to whether IHFL and IVL had violated the orders of this Court or not? To decide this issue, it would be appropriate to determine whether IHFL

transferred any shares which were not encumbered up to 14.08.2017.

28. This brings us to the shareholding pattern of FHL for the period between 01.07.2018 and 30.09.2018 because it is during this period that IHFL transferred the shares. According to IHFL these 12,25,000 shares stood pledged with them. Neither in I.A. No.109493 of 2017 nor in the reply filed by contemnor nos. 1-8, is there any clear-cut statement as to how and when the different pledges were created. Reference has been made to loan documents of 2016 and also to the pledge of 14.08.2017. According to alleged contemnor nos. 1 to 8, FHL was maintaining a demat account with IVL. The case set up is that when the value of the shares of IHFL fell in the market, to make the security equal to the outstanding due to IHFL, further shares were transferred by IVL to IHFL. It is urged that this was done in view of the instructions given prior to 11.08.2017 by FHHPL to IVL and IHFL. These transfers were done on the basis of the delivery instructions slips executed by IHFL as power of attorney holder of FHHPL. Even if this be true, the alleged contemnors are guilty of violating the orders of this Court. The order dated 11.08.2017 clearly debars FHHPL from changing its shareholding in IHFL. Vide order dated 31.08.2017, it was clarified that the order dated 11.08.2017 would apply both to encumbered and unencumbered shares. It was only on 15.02.2018 that the order was clarified that it would not apply to shares encumbered prior to 11.08.2017 and 31.08.2017. A reading of the 3 orders makes it clear that no unencumbered shares could be charged after 31.08.2017 at least. Even if FHHPL had given power of attorney empowering IVL to transfer shares from its demat account to top up the security value, that power of attorney could not be used to violate the orders of this Court. What FHHPL could not do, could obviously not be done by its agent or attorney. The shares which were used to top up the security after 31.08.2017 were obviously unencumbered shares prior to this date. The plea is clearly unacceptable and a lame excuse for the wilful disobedience of the order directing maintenance of *status quo* which, as modified, was to apply to the unencumbered shares. The

respondents were aware and cannot claim ignorance of the purported agreements under which they were required to top-up upon the securities, in case of fall of market value of the shares. In other words, the interim order passed by this Court was to apply even if there was a fall in market value of the securities held by the creditors.

29. To make this position clear, we may refer to the disclosures made by FHL to BSE. The above chart shows that in the quarter ending 30.06.2018, FHHPL held 32,82,851 shares in FHL out of which only 5,51,484 were encumbered, meaning that the balance 27,31,367 were unencumbered shares. The disclosure of 30.09.2018 and 31.12.2018 both reflect that the number of encumbered shares have not changed but the total shareholding of FHHPL in FHL has reduced from 32,82,851 to 11,53,091. This means that what was transferred were 21,29,760 unencumbered shares and not encumbered shares. The transaction of 12,25,000 shares therefore is out of the unencumbered shares because after 31.03.2018, the encumbered shares were much below 12,25,000.

30. We are not entering into the dispute whether the shares were transferred on the basis of pre-signed slips or delivery instruction slips based on the power of attorney but the fact remains that the official record shows that these shares were not encumbered and the contemnors have failed to place any cogent material on record to show that these 12,25,000 shares were pledged on or before 31.08.2017.

31. IHFL, in fact, flagrantly violated this Court's orders and made various transactions transferring even unencumbered shares. The best course available to IHFL would have been to approach this Court seeking a clarification before it made the transfers. This they did not do. We are, therefore, clearly of the view that IHFL and IVL and their officials i.e. contemnor nos. 1 to 8 knowing fully well that this Court had passed an order directing status quo to be maintained with regard to the holding of FHHPL in FHL, violated the order. There can be no manner of doubt that IHFL and IVL have violated these orders and, therefore, we find contemnor nos.1-8 who are active directors of

IHFL and IVL guilty of knowingly and wilfully disobeying the orders of this Court and find them guilty of committing Contempt of Court. We will hear them on the question of sentence.”

56. Dealing specifically with the 12,25,000 shares it was noted that IHFL had failed to make appropriate disclosures as to when the aforementioned shares came to be pledged in its favour. Before this Court IHFL has merely referred to the loan documents of 2016 and the pledges created in connection therewith. It had been similarly contended before the Supreme Court that the shares were transferred and sold in light of instructions provided by FHHPL prior to 11 August 2017 to IHFL and IVL. It was contended that acting in terms of those delivery instructions slips, IHFL had proceeded to transfer and sell 12,25,000 shares. While negating the aforesaid explanation, the Supreme Court observed that the order of 11 August 2017 debarred FHHPL from changing its shareholding in FHL. It further noted that the distinction between unencumbered and encumbered shares was ultimately clarified only on 15 February 2018 with the Supreme Court providing that its earlier interim orders would not apply to shares which may have been encumbered prior thereto. It ultimately held and recorded that even if IVL and IHFL had been conferred the authority to transfer shares by FHHPL in order to top up the security value, the said power could not have been exercised to violate the orders of the Court.

57. It further specifically returned findings that the shares which were allegedly used to top up security after 31 August 2017 were

unencumbered shares prior to the said date. The Supreme Court went on further to hold that during the period falling in the quarter ending 30 June 2018 and 31 December 2018, the total shareholding of FHHPL in FHL had shrunk from 32,82,851 to 11,53,091. Accordingly, it proceeded to hold that the transferred 21,29,760 shares were unencumbered.

58. The Supreme Court returned a categorical finding that the 12,25,000 shares stood comprised in the total unencumbered shares since post 31 March 2018, the encumbered shares were far below 12,25,000. It also observed that IHFL had failed to place any cogent evidence to establish that the 12,25,000 shares had been pledged on or before 31 August 2017. This Court deems it necessary to observe that this position has remained unaltered even in these proceedings.

59. In Para 31 of its order of 15 November 2019, the Supreme Court proceeded to hold that IHFL had failed to approach it for clarification before affecting transfer of shares. The Supreme Court observed that the above would have been the only prudent course of action liable to be adopted. It was on the basis of the aforesaid findings that it came to record that IHFL and its directors were guilty of contempt. The deposit which came to be ultimately made before the Supreme Court in connection with the 12,25,000 shares was thus an embodiment of acceptance of guilt by the contemnors and in order to purge themselves of the contempt that had been found to be established.

60. In its order of 22 September 2022, the Supreme Court had additionally taken notice of the stand of RHC which had asserted that it had duly apprised IHFL of the restraint which operated and thus its obligation to stay its hands. It was also noticed that despite the aforesaid communication IHFL had continued to transfer FHL shares on 11, 12, 14, 17 and 18 September 2018. It further recorded that it was only on 24 September 2018 that it was informed of the transfer of 12,25,000 shares.

61. It becomes germane to note that the chapter relating to 12,25,000 shares which stood pledged in favour of IHFL was accorded a closure by the order of 15 November 2019. Undisputedly IHFL in order to purge the contempt had also deposited the amount garnered from the sale of those shares. The order of 22 September 2022 was essentially concerned with the additional issues which arose from the order of 14 December 2018 and the allegations levelled by Daiichi of parties having violated the order of status quo which came to be granted on that date. The section in the aforesaid order dealing with the role discharged by noticee banks and financial institutions, came to be fanned in light of what was recorded in the order of 15 November 2019 and the role of various parties who were alleged to have acted in violation of the order of 14 December 2018. While the contention of the aforesaid banks and financial institutions who had asserted that the conversion of unencumbered shares to that of encumbered were actions taken in terms of antecedent arrangements and were purely commercial in nature was kept open for the

consideration of this Court, those observations cannot be read as also dealing with the claims of IHFL. Thus, in the considered opinion of this Court, all issues relating to the sale of the pledged shares stood conclusively settled and laid to rest by the order of 15 November 2019.

62. The Court also bears in mind the fact that FHsL seeks to lay a claim upon the money held in deposit by virtue of the order passed by SEBI. The recovery action which has been brought by it, undisputedly, owes its genesis to the directions issued by SEBI in terms of its orders dated 17 October 2018 and 19 March 2019. However, the aforesaid claim of FHsL is yet to crystallise into a binding verdict or an authoritative pronouncement based upon an adjudication undertaken by the Court. As was noticed in the proceeding parts of this order, while the judgment debtor nos. 1, 6,15,16,17,19 have been arrayed as defendants therein, relief is claimed only against Best, Modland, Fern, RHC, Shivi Holdings, Malav Holdings, MMS, SMS and Religare. It becomes pertinent to note that the suit seeks no relief against FHHPL which was the principal owner of the FHL shares which constitute the deposit presently held by the Court. In fact even the SEBI orders do not confer a right upon FHsL to draw proceedings in respect of these shares.

63. At the cost of repetition, it may only be noted that it was the shareholding of FHHPL in FHL which had formed the subject matter of the five assurances and the interim orders passed by the Supreme Court. The Court finds that the present application is fundamentally

concerned with the release of monies which are presently held in deposit and which represents the value of 12,25,000 shares which were sold on the stock exchange.

64. The merits of the objections which stand raised by FHsL is liable to be examined and evaluated bearing in mind the following fundamental and undisputed facts. The ICDs' were undisputedly provided to Best, Modland and Fern. It was these three entities which had ostensibly utilized the said credit facilities and executed agreements in connection therewith. The admitted case of FHsL in its objections is that Best, Modland and Fern executed instruments guaranteeing the repayment of those loans as a consequence of which a charge came to be created in favour of FHsL over their current and future assets. What the Court seeks to emphasize and underline is that FHsL stands placed as a secured creditor essentially over the assets of Best, Modland and Fern. Undisputedly, FHsL does not stand in the shoes of a secured creditor vis-à-vis FHHPL or FHL. Viewed from any angle, FHsL has woefully failed to establish the existence of any charge or right that it could have asserted over these shares. This would be evident when one considers in greater detail the facts relating to the extension of ICDs' by FHsL to Best, Fern and Modland alongside the pledge of shares in favour of IHFL.

65. On a consideration of the aforesaid details surrounding the extension of the ICDs' by FHsL, it is evident that SEBI has essentially found that while they were originally provided to Best, Fern and Modland, they were ultimately transferred to RHC and Religare. SEBI

also holds that MMS and SMS constituted the controlling mind and will of these related entities and that the credit facilities were essentially routed through a complex web of entities controlled by them for their personal gain. It is in the aforesaid background that SEBI directed FHL and FHsL to initiate proceedings for recovery against MMS, SMS, RHC, Best, Fern, Modland and others. It must also be borne in mind that its ultimate directions for a recovery action being initiated was in relation to the amount still owed by Best, Fern and Modland and which in the order of 17 October 2018 was quantified at Rs. 403 crores. It was pursuant to the said direction that FHsL proceeded to institute the suit which remains pending on the board of the Court. The principal question which thus arises is whether FHsL can stake a claim over the moneys which has been transmitted to this Court or seek a restraint against its release in favour of Daiichi.

66. FHsL principally asserts that the aforesaid amount is for the benefit of all creditors and that Daiichi cannot claim a supervening right over the same. In order to evaluate the merits of the said contention, it would be appropriate to step back and briefly recall the origins of this deposit. As was noted hereinabove, both RHC and OIL had before this Court proffered five assurances seeking to assure this Court that the amount owed under the Foreign Award would be always secured and that the J.D.s' were sufficiently positioned to meet any liability flowing therefrom. Coupled with those assurances were the interim orders passed by the Supreme Court which had placed a

restriction on FHHL diluting its holding in FHL. The sale and transfer of 12,25,000 FHL shares has been conclusively and unequivocally found to be in violation of those orders. It was to purge the aforesaid contemptuous act that compelled IHFL to repatriate and deposit an amount equivalent to the value of those shares as on 31 August 2017.

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

68. It must be remembered that these assurances and injunctions did not come to be recorded or granted in proceedings broadly initiated for recovery of moneys diverted and defalcated by MMS, SMS, RHC or any of the other related entities referred above. In fact, these were orders and undertakings recorded in proceedings relating solely to the enforcement of the Foreign Award. Those undertakings were taken on board solely for the purposes of ensuring the liabilities flowing from the Foreign Award being met. On a fundamental plane, therefore, the Court finds itself unable to countenance the prayer made by IHFL.

69. The Court finds itself unable to accept the contentions addressed at the behest of FHsL additionally for reasons which stand recorded in the order of the Court dated 15 October 2020. This Court finds that the submissions addressed on this application are essentially a reiteration of what had been contended at that stage. The Court in the aforesaid order had recognised the undisputed fact that FHsL did not hold a valid decree which would have justified the retention of sale proceeds from auction. The position remains unchanged even today. In any case, FHsL cannot seek preemptive directions in these proceedings in the absence of any protective orders having been passed in the pending suit. FHsL, it may be noted, cannot be accorded reliefs which have not been even granted in the pending suit.

70. The Court also bears in mind that the SEBI orders were principally dealing with the claims of FHsL arising out of the ICDs' which had been granted to Best, Fern and Modland. Those orders were not considering the issue of pledged shares at all. It must be

noted that the 12,25,000 shares did not form subject matter of proceedings before SEBI. For this reason, also the Court finds itself unable to countenance the prayer of FHsL to stall the release of moneys in favour of Daiichi.

71. The Court then proceeds to consider the validity of the claim raised by IHFL. As has been found hereinbefore, the FHL shares which were ultimately sold and transferred by IHFL had been pledged by FHHL to secure the loans extended to RHC, Torus Buildcon and R.S. Infrastructure. The orders of the Supreme Court have categorically found that the sale of those shares by IHFL was in clear violation of the sequestration orders which had been passed. Additionally, it also ruled on the merits of the claims raised by IHFL before it and rejected its contention of a pledge having been validly made prior to 11 August 2017. It also negated its contention that it could have invoked the pledge by virtue of pre-signed instruction slips or a general power of attorney. It also found that IHFL had proceeded to undertake a sale of the pledged shares despite having been duly apprised of the restraint that operated.

72. More fundamentally, this Court finds it unable to appreciate how IHFL could have garnered the strength to reagitate a claim which not only stood negated by the Supreme Court but one which had led to a finding of guilt being entered against it in the contempt petition. The deposit that was made by IHFL was undisputedly one which was affected to purge the contempt which had been found to be proven. The Court is of the firm view that once IHFL had accepted its guilt

and had suffered a judgment on merits, it was wholly impermissible for it to have reagitated the very same issues all over again in these proceedings. A wholly preposterous submission was addressed on its behalf with it being contended that since IHFL had purged itself of the contempt it must be viewed as being “cleansed” of all wrongdoing. The Court fails to comprehend how IHFL could have felt emboldened to seek a reopening of issues which stood lent a quietus by the orders of the Supreme Court. IHFL clearly appears to have sought to reassert a right which stood quashed by the Supreme Court. The Court also notes that the objections raised by IHFL not only proceeded along lines identical to those which were urged before the Supreme Court, it was also based on the same evidence and material. The Court is thus of the firm view that its objections are in clear abuse of the process of Court.

73. The Court further finds that the 12,25,000 shares were those which were held by FHHPL in FHL. The transfer or sale of those shares stood restrained and interdicted by virtue of the orders of the Supreme Court dated 11 and 31 August 2017 and the five assurances. That restraint principally operated against RHC and OIL at whose behest assurances had been proffered. However, by the very nature of the injunction and restraint that came to be framed by the Supreme Court, it clearly encapsulated a binding direction restraining and injuncting all, including parties to the proceedings, from acting in contravention thereof. This by virtue of Article 144 of the Constitution itself. It has also come on the record that IHFL had been duly apprised

of the injunction that operated. The Supreme Court has categorically found that the 12,25,000 shares came to be transferred in clear violation of its orders.

74. The solitary issue which then survives for consideration is whether FHsL can stall the release of the moneys presently held in deposit by the Court based on a claim of attribution which is yet to be established or accorded a judicial seal of approval.

75. While FHsL may claim a right to trace the funds that were lent to Best, Modland and Fern, it would ultimately have to establish its claim in accordance with law. It must be borne in mind that the SEBI orders commands it to proceed against the defendants in the suit which has been instituted. That direction would enable it to proceed against the assets of the defendants arrayed therein. However, and as was noticed hereinabove, the FHL shares were the assets of FHHPL. Even the SEBI order does not empower it to proceed against the assets of that entity. The Court thus finds no legal basis or justification to accept the prayers that are made at its behest.

76. Accordingly and for all the aforesaid reasons, the objections raised by FHsL and IHFL shall stand dismissed.

77. Daiichi, the execution petitioner, shall consequently be entitled to withdraw the entire amount presently held in deposit with this Court and received in terms of the order of the Supreme Court dated 22 September 2022 along with any interest that may have accrued thereon. The Registrar General to proceed in terms of the aforesaid

direction and take expeditious steps for its release subject to due verification.

78. As a consequence to the Court having found that IHFL has acted in sheer abuse of the process of Court, it shall stand foisted with costs quantified at Rs. 10 lakhs to be paid to Daiichi forthwith.

APRIL 24, 2023
Neha/SU

YASHWANT VARMA, J.

