

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/INHERENT JURISDICTION

SPECIAL LEAVE PETITION (CIVIL)NO.20417 OF 2017

M/S. DAIICHI SANKYO COMPANY LIMITED

...Petitioner

Versus

OSCAR INVESTMENTS LIMITED & ORS.

...Respondents

WITH

SUO MOTU CONTEMPT PETITION (CIVIL)NO.4 OF 2019

(In Re: Malvinder Mohan Singh and others)

AND

CONTEMPT PETITION(CIVIL)No.2120 OF 2018

IN

SPECIAL LEAVE PETITION (CIVIL)NO.20417 OF 2017

(Mr. Vinay Prakash Singh vs. Sameer Gehlaut and others)

O R D E R

1. While issuing notice on 11.08.2017 in Special Leave Petition (Civil)No. 20417 of 2017, this Court directed that *status quo* as on the day with regard to the shareholding of Fortis Healthcare Holding Private Limited ('FHHPL', for short) in Fortis Healthcare Limited ('FHL', for short) be maintained. By next order dated 31.08.2017, it

was clarified that the earlier order dated 11.08.2017 was intended to be in respect of '*both the encumbered and unencumbered shares of Fortis Healthcare Limited held by Fortis Healthcare Holding Private Limited*'.

2. Soon thereafter, various banks/financial institutions filed applications seeking modification/clarification submitting *inter alia* that certain shares of FHL held by FHHPL were already pledged with said banks/financial institutions and that it be directed that the orders dated 11.08.2017 and 31.08.2017 would not apply to such encumbered shares. For example, I.A. No. 89755 of 2017 (Volume No. 16) was filed by Axis Bank Limited stating in para 2 of the application that 1,83,75,000 shares were pledged with it since 2014. Similarly, I.A. No. 90247 of 2017 (Volume No. 18) was filed by Yes Bank Limited.

3. By order dated 15.02.2018, the earlier orders dated 11.08.2017 and 31.08.2017 were clarified by this Court to mean that the status quo granted would not apply to shares of FHL held by FHHPL which had been encumbered before the interim orders dated 11.08.2017 and 31.08.2017 were passed.

4. Later, the order dated 15.11.2019 passed by this Court in Contempt Petition (Civil) No.2120 of 2018 (“the Order”, for short) dealt with five assurances given to the High Court of Delhi, while the matter was pending in the High Court and the effect of interim orders passed by this Court. In paragraph 41 of the Order, this Court found that there was significant decline in the number of shares held by FHHPL from September, 2016 to December, 2018. It was observed:-

“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.”

5. As a matter of fact, the concerned figures showing shareholding patterns including the division between encumbered and unencumbered shares in various quarters were set out in a tabular chart in paragraph 23 of the Order. Said paragraph 23 was as under:-

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

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

10.	September 2018	11,53,091	5,51,484	6,01,607
11.	December 2018	11,53,091	5,51,484	6,01,607

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.”

6. The observations in paragraphs 34 to 38 of the Order indicate that the number of unencumbered shares held by FHHPL steadily declined and that *‘the contemnors knowingly and willingly lost control of Fortis Healthcare Limited (FHL)’*.

7. Mr. Kailash Vasdev, learned Senior Advocate, appearing for one of the contemnors had invited our attention to the affidavit filed on behalf of Respondent No. 14 in compliance of order dated 14.05.2018 (Volume 55). The tabular chart given in paragraph 7 of said affidavit

and assertions in paragraph 8 thereof were to the following effect:

“7. The details of the number of shares held by FHHL in FHL are as follows:

Date	Encumbered Shares	Unencumbered Shares	Total Number of shares
28.02.2017	26,81,66,020	3,84,25,509	30,65,91,529 (59.23%)
31.03.2017	23,18,01,440	3,84,40,089	27,02,41,529
31.07.2017	18,64,94,060	84,89,948	19,49,84,008
31.08.2017	17,53,94,820	26,31,777	17,80,26,597
31.01.2018	17,53,83,320 (pursuant to a release of 11,500 pledged shares)	26,43,277	17,80,26,597
28.02.2018	7,65,584	26,54,867	34,20,451
31.03.2018	6,89,084	27,31,367	34,20,451
16.05.2018	6,31,484	27,31,367	33,62,851 (0.65%)

8. Neither Respondent no.14 nor Respondent No.19 sold and/or further encumbered any shares after 06.03.2017. However, pursuant to the existing loan/pledge agreements, various banks themselves exercised the right of pledge/top-up of the pledge shares without any reference or any action from Respondent Nos.14 & 19 and/or FHHL, described in greater detail hereinbelow. Further, the Hon'ble Supreme Court, vide its orders dated 11.08.2017 and 31.08.2017 enjoined FHHL and all financial institutions from selling/alienating encumbered as well as unencumbered shares held by FHHL in FHL. This order was modified by

the Hon'ble Supreme Court on 15.02.2018, whereby the encumbered shares were permitted to be sold by the respective lenders. Due to all above, there were sale/fresh encumbrances from the period 06.03.2017 till 31.08.2017 but thereafter till 15.02.2018 there was no change in the said encumbrance/sale and once again there were further sales after 15.02.2018. The unencumbered shares held by FHHL in FHL are protected by the order dated 23.02.2018 passed by the Hon'ble Supreme and cannot be encumbered/alienated by FHHL. Copies of the orders dated 11.08.2017, 31.08.2017, 15.02.2018 and 23.02.2018 passed by the Hon'ble Supreme Court are annexed herewith and marked as **Annexure A (colly).**"

8. This reply, thus, clearly shows that though allegedly neither Respondent No. 14 nor Respondent No. 19 sold or further encumbered any shares after 06.03.2017, various banks/financial institutions themselves exercised the right of pledge/top-up of pledged shares without any reference to or action from either Respondent No. 14 or Respondent No. 19.

9. In the circumstances, notices were issued to various banks/financial institutions as detailed in the order dated 11.02.2021.

10. Appearing for some of the banks/financial institutions, Mr. Shyam Diwan and Mr. Ramji Srinivasan, learned Senior Advocates; and Mr. Jayant Mehta, Mr. Sanjay Gupta and Mr. Sharma, learned Advocates, submitted *inter alia* that the issue was already gone into by

this Court and that there were no pleadings to which any response could be filed by the concerned banks/financial institutions.

11. In reply, Mr. Rakesh Dwivedi, learned Senior Advocate invited our attention to the chart set out in paragraph 23 of the Order, to submit that first three entries of the chart disclose that the total number of shares remained constant at 32,50,91,529; and that after the assurance was given on 23.01.2017 by the concerned respondents before the High Court of Delhi (marked as *second assurance* in paragraph 5 of the Order), not only the total number of shares started dwindling but the number of unencumbered shares went down from 7,31,68,281 to 6,01,607, as stated in the chart. Mr. Dwivedi, then, referred to the affidavit dated 08.02.2017 filed on behalf of all the respondents in the High Court of Delhi which held out that the value of unencumbered shares was more than Rs.4,000/- crores and that the value of the unencumbered security was sufficient in the event the award was to be enforced. The relevant paragraphs of said affidavit were as under:-

“2. That *vide* order dated 23.1.2017, this Hon’ble Court had directed an affidavit to be filed by anyone of the Respondents on behalf of all the Respondents in respect of the unencumbered assets held by the Respondents in support of the assurance given to the Court as recorded in the letter dated 24.5.2016.

3. Therefore, in furtherance of the Order dated 23.1.2017, I am filing the present affidavit on behalf of Respondent No. 19 and all other Respondents.

4. All the Respondents had submitted their respective affidavits disclosing their assets on 6.12.2016 to this Hon’ble Court. The aggregate book value of investments held by all the Respondents (excluding investments *inter se* amongst the Respondents) as per the said Affidavits is Rs.10,217.10 Crores out of which investments to the tune of Rs.1,409.93 crores are encumbered leaving the residual investments to the tune of Rs.8,807.18 Crore as unencumbered. Further, as on 31.12.2016, the book value of investments held only by RHC Holding Private Limited (Respondent No.19) as on 31.12.2016 is Rs.6,510.54 Crores out of which investments to the tune of Rs.1,513.86 Crores are encumbered leaving the residual investments to the tune of Rs.4,996.68 Crores as unencumbered.

5. Respondent No.19 has also undertaken an internal valuation of its unencumbered investments as on 31.12.2016 mentioned in para (4) above and based on such internal valuations, the estimated (on a conservative basis) fair value of its unencumbered investments as on 31.12.2016 is approximately Rs.3,453 Crores.

6. Apart from the aforesaid investments, Respondent No.19 has also extended loans and advances (other than loans and advances to other Respondent entities) and after netting off the loans raised on current assets, the amount of loans and advances recoverable is Rs.252.59 Crores as on 31.12.2016 which is over and above the aforesaid investments.

7. There is no intention of selling any of the unencumbered investments by way of shares held by Respondent No.19. A proposal which is under discussion may involve the sale of 29,00,000 equity shares of SRL Limited held by Respondent No.19 and 7.05,000 equity shares of SRL Limited held by Malav Holding Private Limited (Respondent No.15) to external investors in the near future. These shares of SRL Limited are encumbered and thus not included in the value of unencumbered assets mentioned at paras (4) & (5) above. Obviously this will have to be after obtaining the consents of the security holders. The proceeds of such sale will have to be utilized to pare down the debt – the net assets of the Respondents will thus remain unchanged. The shares being sold [36,00,000] which are below 5% of the share capital of SRL will be sold to an external investor. The further proposal under consideration is to merge SRL with another listed group company at a later point of time. Even if this does take place, this will have no implications on the next assets of the Respondents.

8. There are proposals to issue further capital in the downstream companies [below Respondent No.19]. The net result of issue of shares will be accretion in the value of the shares of the upstream company. The promoters would continue to remain the single largest shareholders in the companies where fresh capital is being issued to minority investors, and that will create value going forward. The induction of a Private Equity fund or some such investor – were it to take place – will improve the finances of the downstream companies and thus add to the fair value of the unencumbered and encumbered shares.

9. The value of the unencumbered assets declared is sufficient security for the Award in the event it is enforced. This fair value of the unencumbered assets as mentioned in para (5) does not include value of 5 crore equity shares of Fortis Healthcare Limited held by the underlying subsidiary of the Respondents which have been kept aside from the aforesaid valuation for the sake of flexibility and debt repayments of various group entities.”

12. It was, therefore, submitted that it was not just a case of creating encumbrance or pledge but, there were instances of sale of shares and the purpose was definitely to reduce the extent of control of FHHPL. He further submitted that at the stage when the applications for modification/clarification were preferred by the banks and financial institutions, on the basis of which the order dated 25.02.2018 was passed by this Court, none of the banks had told this Court what the consequences of said order would be; and that in a matter of a year-and-half, the shareholding of FHHPL stood reduced to negligible level.

13. Mr. Arvind P. Datar, learned Senior Advocate, added that there would normally be a basic arrangement or loan agreement, in terms of which various kinds of securities including charge over properties, corporate and personal guarantees would be offered; and that a pledge of shares would only be by way of an additional security. None of the banks/financial institutions had indicated why the unencumbered shares were sought to be put under encumbrance or the shares were sold when other forms of securities were available. He further submitted that the arrangements under which the shares were pledged

must be disclosed so that the purpose for which the basic accommodation or loan was obtained would also be clear. For example, according to him, in November, 2016 a loan agreement was entered into between India Bulls and RHC Holding Private Limited for an amount of Rs.350 crores purportedly for 'construction/development of residential projects'. He submitted that no such project had come up and the amount of Rs.350/- crores through successive transactions, was siphoned away. What kind of due diligence was undertaken by the banks/financial institutions while extending the loan facility must therefore be brought on record.

14. Both the learned Senior Counsel submitted that with various orders passed by the High Court and this Court, the concerned individuals and corporate entities could not sell the shares held by FHHPL directly and, therefore, a device was employed and the arrangement was so structured that the shares were proceeded against by the banks and financial institutions. It was submitted that the banks/financial institutions had intervened in the matters pending before this Court, that they were definitely aware of the Award granted

in favour of M/s. Daiichi Sankyo Company Limited; and that the role of banks and financial institutions would, therefore, require closer scrutiny.

15. In the premises, for the present, we direct all the noticee banks and financial institutions :-

- (a) to place on record the basic documents pertaining to loans advanced or financial accommodations extended in respect of which the shares of FHL were pledged with them;
- (b) to place on record the nature of securities offered in connection with such loan arrangements;
- (c) to place on record the details of the encumbered and unencumbered shares of FHL standing in the name of FHHPL, held by them in September, 2016;
- (d) to place on record the details of encumbered and unencumbered shares of FHL standing in the name of FHHPL, held by them on 11.08.2017;

- (e) to give details of shares of FHL standing in the name of FHHPL, which were put by them under encumbrance after 11.08.2017;
- (f) to give details of shares of FHL standing in the name of FHHPL, sold by banks/financial institutions from January, 2017;
- (g) to disclose whether such encumbrance created after 11.08.2017 was in pursuance of any fresh arrangement or agreement and, if so, the details of such agreement/arrangement;
- (h) to disclose whether under such agreement/arrangement any other security was given by the pledgors; and
- (i) to give the value of the encumbered shares as they stood in September, 2016, on 11.08.2017 and on subsequent dates.

16. The appropriate responses shall be filed by all the noticee banks and financial institutions on or before 22.02.2021.

17. List these matters for further consideration on 24.02.2021.

.....J.
[Uday Umesh Lalit]

.....J.
[Indira Banerjee]

.....J.
[K.M. Joseph]

New Delhi;
February 18, 2021.