

S.E.B.I.

A

v.

SAHARA INDIA REAL ESTATE CORPORATION LTD. & ORS.  
(I.A. Nos. 101-103)

in

Contempt Petitions (C) No. 412-413 of 2012

B

in

Civil Appeals No. 9813 and 9833 of 2011

and

Contempt Petition (C) No. 260 of 2013

C

in

Civil Appeal No. 8643 of 2012

JUNE 04, 2014

**[T. S. THAKUR AND A. K. SIKRI, JJ.]**

D

*Scams – Investor-fraud case – Invitation/collection of deposits from general public in the form of ‘Optional Fully Convertible Debentures’-OFCD by a Company – Complaint by investors’ group – Direction by SEBI to the Company not to offer equity shares/OFCDs or any other securities to public or invite subscriptions – In appeal, the High Court issuing further directions to the promoter and the directors of the Company to jointly and severally refund the amount collected alongwith interest @ 15% p.a. – Pursuant thereto orders passed by SEBI, tribunal and this Court as regards refund of amount as also extension of time period for making refund – However, non compliance with the directions – Contempt petitions against the contemnors – Various orders passed – Interim applications by contemnors praying that restraint on sale and transfer of properties of the Company be lifted – In the course of proceedings, contemnors committed to judicial custody – Subsequently, on the prayer of the contemnors seeking bail, conditional order granting interim bail to contemnors passed by this Court, condition being to deposit Rs. 10,000/- crores – Non-compliance of the condition – Aggrieved, promoter filing writ petition, challenging the order*

E

F

G

H

A *whereby contemnor was committed to judicial custody; and also seeking release from custody – Dismissal of writ petition by this Court – Held: In view of the dilatory tactics adopted by the contemnors to delay the proceedings before SEBI, High Court and this Court, and non-compliance of the orders*  
B *passed despite sufficient opportunities the terms stipulated in the order granting interim bail to the contemnors cannot be modified – Contemnors cannot be shifted to a guest house for continued custody and detention – However, orders passed by this Court and by SEBI restraining sale and*  
C *transfer of moveable and immovable properties held by the Company modified – In view of the importance of the issues and the fact that a three judge bench matter is sought to be enforced in these proceedings, said proceedings referred to three-Judge Bench – Reference to larger Bench.*

D **‘SIRECL’ company and SHICL ‘company’ invited/ collected deposits from general public in the form of ‘Optional Fully Convertible Debentures’ OFCD. On a complaint by professional investors’ group, SEBI found that the mobilisation of funds under the Red Herring**  
E **Prospectus issued by the two companies was not legally permissible and issued directions to the company not to offer their equity shares/OFCDS or any other securities to the public or invite subscription. The High Court upheld the said directions and further directed the**  
F **promoter and the Directors of the Company to jointly and severely refund the amount collected by them alongwith interest @ 15% p.a. from the date of the receipt of the deposits till the date of such repayment. SEBI directed that the company would not access the security market for raising funds till the time the payments are not made.**  
G **In appeal, the tribunal upheld the order passed by the SEBI and directed the company to refund the amount collected from the investors. Thereafter, this Court extended the period for making the refund and directed the company to deposit the amount with the SEBI. The**  
H **company did not comply with directions. Pursuant to the**

order by this Court, the company deposited Rs.5120/- A  
crores with the SEBI but failed to pay the remaining  
amount. SEBI then filed contempt petitions against the  
contemnors for non-compliance of the directions of this  
Court. Various orders were passed from time to time.  
Instant applications were filed in these contempt B  
petitions seeking lifting of restraint on sale and transfer  
of properties of the Company. In the course of  
proceedings in contempt petitions, since the directions  
of this Court were not complied with, non-bailable C  
warrants were issued against the promoter for his  
production before this Court and subsequently, the three  
contemnors including the promoter were taken into  
judicial custody. Thereafter, since the contemnors  
insisted for grant of bail, this Court passed a conditional  
order granting interim bail to the contemnors; the D  
condition being that they deposit Rs.10,000/- crores.  
Upon compliance, the contemnors were to be released  
from the custody. However, instead of complying with  
the above directions, the promoter filed writ petition  
challenging the validity of the order and sought his E  
release from the custody. The writ petition was  
dismissed.

Disposing of the IAs with directions, the Court

HELD: 1.1 The prayers of the contemnors that they  
want relaxation in the restraint orders over the bank  
deposits and immovable properties to comply with the F  
directions of this Court regarding deposit of the amounts,  
does not pose any difficulty. As regards the prayer for  
grant of bail or relaxation of jail conditions, there is no  
inclination to modify the order granting interim bail to  
the contemnors upon conditions stipulated in the said G  
order, in view of the background in which the  
contemnors came to be committed to the jail and the  
finding recorded by the Court that they have at all earlier  
stages tried to adopt dilatory tactics and avoided to  
comply with the orders passed by the Court. It was H

A pleaded, in the alternative, that the least which could be done was to shift the contemnors from Tihar Jail to a guest house for incarceration to enable them to take decisions that are necessary for compliance with the directions issued by this Court. This request was  
B opposed by the counsel for SEBI, according to whom similar requests made repeatedly over several hearings in the past have been declined by this Court, although no specific order refusing the same was recorded. [Para 17][1029-A-G]

C 1.2 Apart from the fact that the prayer now made is a repetition of similar prayers made in the past which have not cut any ice with the bench hearing the matter, there is no reason to make a departure from the usual course in the instant case. The Bench passed a  
D conditional bail order after due and proper consideration having regard to the attendant circumstances including conduct of the contemnors. The order can be modified only under very compelling circumstances. The only reason given by the applicants is that interim release or  
E transfer of the contemnors to a guest house would enable them to dispose of the properties speedily and enable them to arrange for the requisite Bank Guarantees, cannot be accepted. It is noteworthy that the total amount to be deposited is between Rs. 33000/-  
F to Rs. 35000/- crores. To show their bonafides, the contemnors have been directed to deposit less than 1/3<sup>rd</sup> of that amount as a condition for bail. After all, even when this part of the order is complied with and the contemnors are set free, they will have to arrange the deposit of the balance amount, which again is very  
G substantial. That apart, it is not the case of the contemnors that they or anyone of them suffers from any medical condition that calls for hospitalisation or an atmosphere conducive for recovery from any disease. This Court has already issued directions permitting  
H visitation to those who need to visit the contemnors in

jail. That arrangement has not been found to be inadequate at present so as to call for any change. Thus, the prayer for modification of the order is rejected. [Para 18, 19][1029-G-H; 1030-A-F]

1.3 There is considerable merit in the submission that the restraint order issued by the SEBI and by this Court forbidding transfer and alienation of moveable and immovable assets by the Group of companies has the effect of preventing the contemnors from complying with the directions of this Court which require them to deposit Rs.5,000/- crores in cash besides a bank guarantee for a similar amount of Rs.5,000/- crores. While it is true that the contemnors stand committed to prison for their non-compliance with the directions of this Court, nothing should prevent them from taking steps to comply with the said directions or the conditions subject to which they have been granted interim bail. Restraint against transfer of the assets by the contemnors and the companies promoted by them precisely has the effect of doing so. The respondent company need to eventually deposit a substantial amount which according to the current estimate may be in the neighbourhood of Rs. 30,000 to Rs. 35,000 crores inclusive of interest accrued on the principal amount. Sale of valuable properties at a price lesser than the market value of such assets is bound to prejudicially affect the interest of the depositors and defeat the orders passed by this Court in its letter and spirit. That is particularly so because according to the counsel, SEBI is unable to value the properties or process the sale and transfer thereof. It was in that background that this Court indicated to the counsel for the appellants that the restraint orders cannot be lifted in toto and that the respondent company should come forward with a proposal for sale of such properties as were sufficient to comply with the interim bail direction of this Court regarding deposit of Rs.5,000/- crores in

A cash and a bank guarantee of Rs.5.000/- in addition. Appellant's counsel pursuant to that observation confined his prayer for permission to sell/transfer only nine items of properties situated in nine different cities in the country and disclosed the estimated value of such property in the statement. The counsel on instructions made a statement that although the note filed by him mentions the names of nine different cities without giving details of the properties situated in those cities but the fact remains that the properties referred to in the note are only nine in number and no more. [Para 20][1030-F-H; 1031-A-G]

1.4 Keeping in view the total number of properties held by the Group of companies, transfer of sale and/or mortgage of the nine items of properties situated in nine cities mentioned in the note should, suffice to enable the contemnors to comply with the 26<sup>th</sup> March, 2014 directions of this Court. In order, however, to ensure that the sale value is fair and reasonable, it is made clear that no item of property shall be sold at a price lesser than the circle value of the properties fixed for the area where such property is located. [Para 21][1031-G-H; 1032-A-B]

1.5 As regards properties situated in London and New York, by an interlocutory Order passed on 29<sup>th</sup> May, 2014 the contemnors were directed to furnish certain additional information necessary for permitting the sale of the said assets. The information demanded includes permission/approval from the Bank of China with whom the said properties are mortgaged and shares held by Saharas for repayment of the loans borrowed from the said bank hypothecated/pledged. Saharas were directed to get the amount outstanding towards the loan transactions *qua* the said properties confirmed from the Bank of China so as to give a clear picture of the extent

H

of liability that remains to be discharged against the said assets. The fact that the valuation reports regarding the three assets were prepared at the instance of the Bank of China shall also have to be verified and confirmed by the Bank of China, especially because no sale of the assets in question can be permitted at a price lesser than the price at which the said assets have been valued by the valuers who are said to be valuers of repute. Directions regarding sale of the assets outside the country can, therefore, await the furnishing of information and verification of the facts. [Para 22] [1032-B-G]

1.6 The I.As are disposed of with the following directions:

(i) The prayer for modification of the terms stipulated in the order granting interim bail to the contemnors is rejected.

(ii) The prayer for shifting the contemnors to a guest house for continued custody and detention till they comply with the directions of this Court for their release on interim bail is rejected.

(iii) The orders passed by this Court and by SEBI restraining sale and transfer of moveable and immoveable properties held by Saharas are modified.

(iv) For the sale of the three properties situated outside the country, the question is left open to be determined after the requisite documents/information is made available by Sahara.

(v) Keeping in view the importance of the issues that fall for determination in these proceedings and the ramifications that the directions issued by this Court may have as also the fact that one very important order which is sought to be enforced in these proceedings was

A passed by a three-Judge Bench, these proceedings are referred to a three-Judge Bench.

(vi) Having regard to the nature of these proceedings and the stakes that are involved, Mr. F.S. Nariman, Senior Advocate is requested to assist the Court as an amicus curiae. [Para 23][1032-F-H; 1033-A-C; 1035-A-E]

CIVIL ORIGINAL JURISDICTION : I.A. Nos. 101-103

h

C Contempt Petition (C) No. 412 & 413 of 2012

h

Civil Appeal No. 9813 & 9833 of 2011 and  
Contempt Petition (Civil) No. 260 of 2013

D

h

Civil Appeal No. 8643 of 2012

Pratap Venugopal, Gaurav Nair, M/s K. J. John & Co. and Vishwa Pal Singh, Advs. for the Petitioner.

E Dr. Rajeev Dhavan, Sr. Adv., Keshav Mohan, Gaurav Kejriwal, Jatin Pore, Sandeep Bajaj, Mrs. Shally Bhasin Maheshwari and Gautam Awasthi, Advs. for the Respondents.

The Judgment of the Court was delivered by

F **T. S. THAKUR, J.**

G 1. Sahara India Real Estate Corporation Limited (SIRECL) and Sahara Housing Investment Corporation Limited (SHICL) (hereinafter referred to as 'Saharas' for short) invited and claim to have collected deposits from general public including cobblers, labourers, artisans and peasants in the form of what were described as 'Optional Fully Convertible Debentures' (OFCD). On a complaint received from Professional Group of Investors Protection, SEBI found that the mobilisation of funds under the Red Herring Prospectus

H



(RHP) dated 13<sup>th</sup> March, 2008 and 6<sup>th</sup> October, 2009 issued by the two companies was not legally permissible. By an *ad interim ex parte* order dated 24<sup>th</sup> November, 2010 SEBI directed Saharas not to offer their equity shares/OFCDS or any other securities to the public or invite subscription in any manner whatsoever either directly or indirectly pending further orders. Aggrieved by the said order Saharas approached the High Court at Bombay but the High Court not only declined to interfere with the directions issued by SEBI but also passed a further order on 23<sup>rd</sup> June, 2011, directing the promoter Mr. Subrata Roy Sahara and Directors Miss Vandana Bhargava, Mr. Ravi Shankar Dubey and Mr. Ashok Roy Choudhary of Saharas to jointly and severally refund the amount collected by Saharas in terms of the RHPs issued by them alongwith interest @ 15% p.a. from the date of the receipt of the deposits till the date of such repayment. Pursuant thereto the SEBI ordered that the refund of the amount shall be made only in cash through demand drafts or pay orders. The SEBI issued further directions including a direction that Sahara Commodity Services Corporation Limited (earlier known as SIRECL) and SHICL shall not access the security market for raising funds till the time the aforesaid payments are not made to the satisfaction of the SEBI.

2. Aggrieved by the order aforementioned, Saharas filed an appeal before the Securities Appellate Tribunal (SAT) who concurred with the view taken by the SEBI, and while affirming the order passed by the SEBI, directed Saharas to refund the amount collected from the investors within a period of six weeks.

3. Appeals No.9813 and 9833 of 2011 were then preferred by Saharas against the above orders in which this Court by an order dated 28<sup>th</sup> November, 2011 extended the period for making the refund upto 9<sup>th</sup> January, 2012 but finally disposed of the appeals by an order dated 31<sup>st</sup> August, 2012. This Court while doing so modified the order passed by the SEBI and the SAT and directed Saharas to deposit with the

- A SEBI the amount collected by them through their RHPs together with interest @ 15% p.a. within a period of three months. The amount when deposited was directed to be invested in a nationalised bank to earn interest. Saharas were also directed to furnish details with supporting documents to establish
- B whether they had refunded any amount to the investors who had subscribed through the RHPs in question. SEBI was directed to examine the correctness of the details so furnished. Failure to prove the refund of the amount by Saharas had to give rise to an inference that Saharas had not refunded the amount to
- C the real and genuine subscribers as directed by the SEBI.

4. It is common ground that directions issued by this Court by its order dated 31<sup>st</sup> August, 2012 were not complied with. Instead Appeal No.221 of 2012 was preferred by Saharas before the SAT which was dismissed by the Tribunal as

D premature. This dismissal was assailed by the Saharas in C.A. No. 8643 of 2012 that came to be disposed of by a three-Judge Bench of this Court by an order dated 5<sup>th</sup> December, 2012 with the following among other directions:

- E *“(I) The appellants shall immediately hand over the Demand Drafts, which they have produced in Court, to SEBI, for a total sum of 5120/-Crores and deposit the balance in terms of the order of 31st August, 2012, namely, 17,400/- Crores and the entire amount,*
- F *including the amount mentioned above, together with interest at the rate of 15 per cent, per annum, with SEBI, in two installments. The first installment of 10,000/-Crores, shall be deposited with SEBI within the first week of January, 2013. The remaining balance, along with the interest, as calculated, shall be deposited within the*
- G *first week of February, 2013. The time for filing documents in support of the refunds made to any person, as claimed by the appellants, is extended by a period of 15 days. On receipt of the said documents, SEBI shall implement the directions contained in the order passed on 31st August, 2012. In default of deposit*
- H

[T. S. THAKUR, J.]

*of the said documents within the stipulated period, or in the event of default of deposit of either of the two installments, the directions contained in paragraph 10 of the aforesaid order dated 31st August, 2012, shall immediately come into effect and SEBI will be entitled to take all legal remedies, including attachment and sale of properties, freezing of bank accounts etc. for realisation of the balance dues."*

5. Pursuant to the above, Saharas deposited Rs.5120/- crores with the SEBI but failed to pay the remaining amount. The balance amount payable is in the vicinity of Rs.12280/- crores, exclusive of interest payable on the same. SEBI then filed Contempt Petitions No.412 and 413 of 2013 and, Contempt Petition No.260 of 2013 against the contemnors for non-compliance of the directions of this Court. Various orders have been passed in these contempt petitions from time to time, and those which are germane for our purpose, shall be adverted to hereinafter at the appropriate stage. The applications (IAs) which we are dealing with in this order, are filed in these contempt petitions and arise out of the earlier orders passed.

6. It is pertinent to point out at this stage that in the course of the proceedings in the above contempt petitions some proposals appear to have been explored by the parties for compliance with the directions of this Court but all such proposal were found to be unsatisfactory eventually leading to the issue of non-bailable warrants against Mr. Subrata Roy Sahara for his production before this Court. Three other Directors of Saharas were also ordered to remain present before this Court.

7. On 4<sup>th</sup> March, 2014 when the contemnors appeared before this Court one of them in custody, this Court recorded a finding that the directions issued by the Court by its order dated 31<sup>st</sup> August, 2012 and 5<sup>th</sup> December, 2012 and those issued on 25<sup>th</sup> February, 2013 in CA No.8643 of 2012 and IA No.67

A of 2013 had not been complied with, despite sufficient opportunities to the contemnors to do so. It was also held that contemnors had adopted dilatory tactics to delay the proceedings before the SEBI, the High Court and even before this Court. It was further found that no acceptable proposal  
B was presented to comply with the directions of this Court which left no option for this Court except to commit three out of the four contemnors to judicial custody. The contemnors are, ever since the said order, in judicial custody in Delhi's Tihar Jail.

C 8. It is clear from the above narration that as per the orders passed, a huge amount of nearly Rs.33,000/- crores is yet to be deposited. It is also apparent that deadlines for depositing this amount are long over. No doubt various proposals have been given by Saharas for making payments but none has fructified. From the tenor of orders passed earlier, it can easily  
D be gauged that these proposals did not inspire confidence. In this backdrop when the matter again came on 26<sup>th</sup> March, 2014, and the contemnors insisted on granting bail to them, this Court passed a conditional Order granting interim bail to the contemnors; the condition being that they deposit  
E Rs.10,000/- crores. Out of this a sum of Rs.5,000/- crores had to be deposited in cash before this Court while the balance amount of Rs.5000/- crores had to be secured by a bank guarantee of a nationalised bank, furnished in favour of the SEBI. Upon compliance with those conditions the contemnors  
F were directed to be released from the custody and the amount deposited by them to be transferred to the SEBI. Since we are directly concerned with this order, we may, as well, extract the same:

G *"We have gone through the fresh proposal filed on 25.3.2014. Through the same is not in compliance with our Order dated 31.8.2012 or the Order passed by the three-Judge Bench of this Court on 5.12.2012 in Civil Appeal No.8643 of 2012 and on 25.2.2013 in I.A. No. 67 of 2013 in Civil Appeal No.9813 of 2011 with I.A. No.5 of 2013 in Civil Appeal No.9833 of 2011, we are*  
H

*inclined to grant interim bail to the contemnors who are A  
detained by virtue of our order dated 4.3.2014, on the  
condition taht they would pay the amount of Rs.10,000  
crores – out of which Rs.5,000 crores to be deposited  
before this Court and for the balance a Bank Guarantee  
of a nationalised bank be furnished in favour of S.E.B.I. B  
and be deposited before this Court.*

*On compliance, the contemnors be released  
forthwith and the amount deposited be released to  
S.E.B.I.*

*We make it clear that this order is passed in order C  
to facilitate the contemnors to further raise the balance  
amount so as to comply with the Court's Orders  
mentioned above."*

9. Instead of complying with the above directions Mr. D  
Subrata Roy Sahara filed Writ Petition (Crl.) No. 57 of 2014  
challenging the validity of the order of this Court dated 4<sup>th</sup>  
March, 2014 on the ground that the same was void and *non-  
est* in the eyes of law. A declaration to the effect that continued  
incarceration of the petitioner Mr. Subrata Roy Sahara in E  
custody was illegal and a writ of habeas corpus and directions  
for release of the petitioner from custody were also prayed for.  
The said writ petition was heard by a Bench comprising Hon'ble  
K.S. Radhakrishnan and J.S. Khehar, J.J. and came to be  
dismissed vide detailed judgment dated 6<sup>th</sup> May, 2014. F

10. Having traversed in brief, the otherwise long journey  
of this case, we revert back to the IAs which are the subject  
matter of the instant order. In the present I.As. No.101-103 of  
2014 filed in Contempt Petitions (C) No.412 and 413 of 2012  
and Contempt Petitions (C) No. 260 of 2013, the contemnors G  
have made the following prayers:

*"(a) Lift the restrictions imposed by this Hon'ble Court  
vide its order dated 21.11.2013 and SEBI's order  
dated 13.2.2013, in respect of operation of the H*

- A            *Bank Accounts/deposits/demat accounts/sale of securities mentioned at **Annexure-A**;*
- (b) *Lift the restrictions imposed by this Hon'ble Court vide its order dated 21.11.2013 and SEBI's order dated 13.02.2013 in respect of the movable and*
- B            *immovable properties mentioned in **Annexure B**, on condition that net proceeds (after costs and taxes) thereof be utilized exclusively for payment ordered by this Hon'ble Court.*
- (c) *pass such further or other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*
- C

D            11. Justice K.S. Radhakrishnan having demitted office and, Justice J.S. Khehar having recused himself from the further hearing of the case, the applications were listed before us for urgent hearing on 19<sup>th</sup> May, 2014 when the same were heard in part and directed to come up for continuation on 29<sup>th</sup> May, 2014.

E            12. Appearing for the contemnors, Dr. Rajiv Dhawan made a three-fold submission before us. Firstly, he contended that the order passed by this Court on 26<sup>th</sup> March, 2014 granting interim bail subject to the conditions stipulated in the said order deserved to be modified as the conditions stipulated therein were not only onerous but incapable of being

F            *complied with in the facts and circumstances of the case. Alternatively, he contended that compliance with the conditions stipulated by this Court would require sale of several items of immovable properties held by Sahara Group of companies which sales can be finalised only if the contemnors were*

G            *enlarged from custody with a view to enable them to negotiate the sale transactions. He submitted that keeping in view the extent and nature of the properties which shall have to be sold as also the amounts that have been ordered to be deposited*

H            *compliance with the conditions stipulated by this Court is extremely difficult, if not impossible, unless the contemnors are*

enlarged from jail and allowed to take steps necessary for compliance. It was further contended by Dr. Dhawan that the restraint orders against the sale of the moveable and immoveable properties held by the 'Saharas' made it impossible for them to arrange compliance unless the embargo placed upon such sale and transfer by this Court's Order dated 21<sup>st</sup> November, 2013 and that passed by SEBI on 13<sup>th</sup> February, 2013 are lifted. He argued that even if the contemnors were not enlarged on bail till such time the directions issued by this Court on 26<sup>th</sup> March, 2014 were not complied with, the restraint orders would prevent the contemnors from raising necessary funds to comply with the directions issued by this Court. He urged that the total amount currently lying in several bank accounts and/or invested with banks and companies in the form of FDs, Bonds and securities etc. came to Rs.2500/- crores approximately. The broad details of the amounts so available have been given by Saharas in the note submitted by Dr. Dhawan as under:

***Details of approx. Rs 2500 Crores along with interest accrued thereon to be paid by Saharas within 5 working days of lifting the embargo (Pg 39 – 54)***

a)	Fixed Deposits	1688.74 crores
b)	Savings Account	464.44 crores
c)	Current Account	18.45 crores
a)	Securities & Bonds	142.86 crores
b)	Government Bonds	72.33 crores
c)	Bank/PSU Bond	34.85 crores
		<hr/>
		2421.67 crores

**Total approx. Rs 2500 crores along with interest accrued thereon**

- A 13. Encashment of the FDs, sale and transfer of the bonds and securities would, argued Dr. Dhawan, help the contemnors to partly comply with the directions regarding deposit of Rs.5000/- crores by moping Rs.2500/- crores. A further sum of Rs.2500/- crores approximately would have to be raised for deposit which will be possible only by sale of the immovable properties situated in nine different cities details whereof were filed by Dr. Dhawan in the form of a statement with the estimated value of such properties which is as under:

Sr. No.	Properties	Valuation as per the Valuation Report (Rs. In crores)	Page Nos. Of Volume I
1.	Pune	575	60 - 76 @ 73
2.	Ahmedabad	470	81 -98 @ 94
3.	Amritsar	153.75	99 - 127 @ 111
4.	Chauma	1430	128 -148 @ 140
5.	Vasai	1169.72	143 - 160 @ 149
6.	Ajmer	160	161 -175 @ 167
7.	Bhavnagar	103	176 - 191 @ 188
8.	Jodhpur	112	192 -208 @ 204
9.	Bhopal	125	209 - 224 222
	<b>TOTAL</b>	<b>4298.47</b>	

14. It was submitted that sale of the above items of property may also not fully satisfy the conditions stipulated by this Court for grant of interim bail thereby leave no option for Saharas except to sell three other items of hotel properties situated outside the country. One of these hotels by the name Grosvenor House is situated in London while the remaining two hotels are in New York (U.S.A.). It was urged that the said three items of property also need to be sold to raise the margin money which the banks concerned insist upon to enable them



to issue a bank guarantee. It was submitted that while the contemnors propose to mortgage Aamby Valley properties, details whereof are given in the Annexure B to I.As. No.101-103, the contemnors would require funds to service any financial arrangement made with the bank/banks. It was also contended that according to the estimate of the contemnors, the properties situated in London and New York would fetch an amount of Rs.5,000/- crores to the contemnors which may be utilised in full or in part towards the margin money necessary for obtaining the bank guarantee(s). The estimated value of these three properties is indicated by the contemnors as under :

Shares of entities owning the following offshore properties	Value as per the Valuation report	Expected Sales Value	Immediate Advances expected	Page No.
Grosvenor House, London	GBP 516,000,000 Rs 50,929,200,000	GBP 645,000,000 Rs 63,661,500,000	USD 50,000,000 Rs 2,900,000,000	667-Vol III
Plaza Hotel, New York	USD 592,000,000 Rs 34,336,000,000	USD 635,000,000 Rs 36,830,000,000	USD 50,000,000 Rs 2,900,000,000	415-Vol III
Dreams Downtown Hotel, New York	USD 252,000,000 Rs 14,616,000,000	USD 252,000,000 Rs 14,616,000,000	USD 50,000,000 Rs 2,900,000,000	231-Vol III
<b>Total</b>		<b>Rs 115,107,500,000</b>	<b>USD 150,000,000</b> <b>Rs 8,700,000,000</b>	
<b>Net Realistic Equity Value to Sahara in India</b>		<b>Rs 50,366,156,000</b>		

A 15. On behalf of the respondent-SEBI it was argued by  
Mr. Venugopal that he has no objection to the encashment of  
the FD receipts and other securities and bonds etc. provided  
the maturity value and sale consideration of such FDRs,  
B securities and bonds is directed to be deposited in the  
designated bank account of SEBI viz. SEBI Sahara Refund  
Account bearing No.012210110003740 with the Bank of India,  
Bandra Kurla Complex Branch, Mumbai. As regards sale or  
mortgage of properties situated in nine different cities  
mentioned above, Mr. Venugopal submitted that appropriate  
C safeguards need be provided for such sale and transfer. Mr.  
Venugopal suggested the following safeguards in this regard:

- (i) *Details of valuation, buyer(s) and terms of sales together with letter (s) of intent be submitted in advance to this Hon'ble Court;*
- D (ii) *Buyer(s) ought not to be related party/parties qua the Sahara Group entities/Director etc. and an affidavit of undertaking to that effect be filed in this Hon'ble Court.*
- E (iii) *The sale proceeds be deposited by the buyer directly to the designated Bank Account of SEBI viz. "SEBI-Sahara Refund Account" bearing No.012210110003740 with Bank of India, Bandra Kurla Complex Branch, Mumbai; and*
- F (iv) *Actual release of title deeds by SEBI to the buyer be made only upon receipt of sale proceeds in the aforementioned Bank Account.*

G 16. A direction to the effect that the sale of the properties shall not be for a price lesser than the circle rates prescribed for the area where the properties are situated was also suggested as an additional safeguard, by the learned counsel. It was also submitted by Mr. Venugopal that so long as the valuation of the assets situated outside the country is fair and  
H reasonable, the SEBI had no objection to the sale thereof to

enable the contemnors to raise funds necessary for compliance with the directions of this Court. A

17. We have given our careful consideration to the submissions made at the bar. It is apparent, from the submissions made at the bar, that these IAs have two limbs: In the first instance, the contemnors want relaxation in the restraint orders over the Bank deposits and immovable properties to comply with the directions of this Court regarding deposit of the amounts. That part of the prayer does not pose any difficulty, as the same is in aid of compliance with the directions of this Court. Second set of prayers is for grant of bail or relaxation of jail conditions in the interregnum. Here, we have our reservations. We are not inclined to modify order dated 26<sup>th</sup> March, 2014 granting interim bail to the contemnors upon conditions stipulated in the said order. We say so because the background in which the contemnors came to be committed to the jail and the finding recorded by the Court that they have at all earlier stages tried to adopt dilatory tactics and avoided to comply with the orders passed by the Court does not in our view call for any modification of the terms on which the contemnors can be released. Dr. Dhawan pleaded, in the alternative, that the least which could be done was to shift the contemnors from Tihar Jail to a guest house for incarceration to enable them to take decisions that are necessary for compliance with the directions issued by this Court. This request was opposed by Mr. Venugopal, according to whom similar requests made repeatedly over several hearings in the past have been declined by this Court, although no specific order refusing the same was recorded. In support of that submission, our attention was drawn to the averments made by the applicant in I.As No.2 to 4 filed by them on 20<sup>th</sup> May, 2014 which averments clearly show that similar prayers were indeed made in the past also. B  
C  
D  
E  
F  
G

18. Apart from the fact that the prayer now made is a repetition of similar prayers made in the past which have not H

A cut any ice with the bench hearing the matter, we see no reason  
to make a departure from the usual course in the present case.  
The Bench has passed a conditional bail order after due and  
proper consideration having regard to the attendant  
circumstances including conduct of the contemnors. The order  
B can be modified only under very compelling circumstances.  
The only reason given by the applicants is that interim release  
or transfer of the contemnors to a guest house would enable  
them to dispose of the properties speedily and enable them  
to arrange for the requisite Bank Guarantees. We don't think  
C so. It is noteworthy that the total amount to be deposited is  
between Rs. 33000/- to Rs. 35000/- crores. To show their  
bonafides, the contemnors have been directed to deposit less  
than 1/3<sup>rd</sup> of that amount as a condition for bail. After all, even  
when this part of the order is complied with and the contemnors  
D are set free, they will have to arrange the deposit of the balance  
amount, which again is very substantial. That apart, it is not  
the case of the contemnors that they or anyone of them suffers  
from any medical condition that calls for hospitalisation or an  
atmosphere conducive for recovery from any disease. This  
E Court has already issued directions permitting visitation to  
those who need to visit the contemnors in jail. That arrangement  
has not been found to be inadequate as at present so to call  
for any change.

F 19. The prayer for modification of the order, accordingly,  
fails.

G 20. We, however, find considerable merit in the  
submission made by Dr. Dhawan that the restraint order issued  
by the SEBI and by this Court forbidding transfer and alienation  
of moveable and immovable assets by the Sahara Group of  
companies has the effect of preventing the contemnors from  
complying with the directions of this Court which require them  
to deposit Rs.5,000/- crores in cash besides a bank guarantee  
for a similar amount of Rs.5,000/- crores. While it is true that  
H the contemnors stand committed to prison for their non-

compliance with the directions of this Court, nothing should prevent them from taking steps to comply with the said directions or the conditions subject to which they have been granted interim bail. Restraint against transfer of the assets by the contemnors and the companies promoted by them precisely has the effect of doing so. The question, however, is as to what extent should the orders of restraint be modified. That aspect assumes importance because of the fact that Saharas need to eventually deposit a substantial amount which according to the current estimate may be in the neighbourhood of Rs. 30,000 to Rs. 35,000 crores inclusive of interest accrued on the principal amount. Sale of valuable properties at a price lesser than the market value of such assets is bound to prejudicially affect the interest of the depositors and defeat the orders passed by this Court in its letter and spirit. That is particularly so because according to Mr. Venugopal, SEBI is unable to value the properties or process the sale and transfer thereof. It was in that background that we had indicated to Dr. Dhawan learned counsel for the appellants that the restraint orders cannot be lifted in toto and that Saharas should come forward with a proposal for sale of such properties as were sufficient to comply with the interim bail direction of this Court regarding deposit of Rs.5,000/- crores in cash and a bank guarantee of Rs.5,000/- in addition. Dr. Dhawan has pursuant to that observation confined his prayer for permission to sell/transfer only nine items of properties situated in nine different cities in the country and disclosed the estimated value of such property in the statement which we have extracted above. Dr. Dhawan on instructions made a statement that although the note filed by him mentions the names of nine different cities without giving details of the properties situated in those cities but the fact remains that the properties referred to in the note are only nine in number and no more.

21. Keeping in view the total number of properties held by Sahara Group of companies, transfer of sale and/or mortgage of the nine items of properties situated in nine cities

- A mentioned in the note and extracted above should, in our opinion, suffice to enable the contemnors to comply with the 26<sup>th</sup> March, 2014 directions of this Court. In order, however, to ensure that the sale value is fair and reasonable, we need to make it clear that no item of property shall be sold at a price
- B lesser than the circle value of the properties fixed for the area where such property is located.

22. As regards properties situated in London and New York we have by an interlocutory Order passed on 29<sup>th</sup> May, 2014 directed the contemnors to furnish certain additional
- C information necessary for permitting the sale of the said assets. The information demanded includes permission/approval from the Bank of China with whom the said properties are mortgaged and shares held by Saharas for repayment of the loans borrowed from the said bank hypothecated/pledged. We
- D have also directed Saharas to get the amount outstanding towards the loan transactions *qua* the said properties confirmed from the Bank of China so as to give us a clear picture of the extent of liability that remains to be discharged against the said assets. The fact that the valuation reports
- E regarding the three assets were prepared at the instance of the Bank of China shall also have to be verified and confirmed by the Bank of China, especially because no sale of the assets in question can be permitted at a price lesser than the price at which the said assets have been valued by the valuers who
- F are said to be valuers of repute. Directions regarding sale of the assets outside the country can, therefore, await the furnishing of information and verification of the facts.

23. In the result we dispose of these I.As with the following
- G directions:

- (i) The prayer for modification of the terms stipulated in our order dated 26<sup>th</sup> March, 2014 granting interim bail to the contemnors is declined and the I.As to that extent dismissed.

H

- (ii) Prayer for shifting the contemnors to a guest house for continued custody and detention till they comply with the directions of this Court for their release on interim bail is also declined and the I.As dismissed to that extent. A
- (iii) Orders dated 21<sup>st</sup> November, 2013 passed by this Court and that dated 13<sup>th</sup> February, 2013 passed by SEBI restraining sale and transfer of moveable and immovable properties held by Sahara are modified to the following extent: B
- (a) *FDs, bonds and securities held by Sahara Group of companies may be encashed by the holders thereof subject to the condition that the maturity value/sale consideration of such FDs, bonds and securities shall be deposited in the designated bank account of SEBI referred to in the earlier part of this order and details of such maturity values and sale consideration furnished to this Court on affidavit to be filed within four weeks from the date the FDs, bonds and securities are encashed, sold and/or transferred.* C D E
- (b) *Immovable properties owned by Sahara Group of companies situated in 9 different cities mentioned in the note filed by Dr. Dhawan and extracted in the body of this order with an estimated value of Rs.2500/- crores are permitted to be sold by the companies/other entities persons in whose names such properties are held subject to the condition that such sales are not for a price lower than the estimated value indicated in the statement filed before this Court or the circle rates fixed for the area in which such properties are situated. The seller shall furnish to this Court* F G H

- A                    *the details of the valuation of the properties sold and the terms of sales together with a declaration that the purchasers is not a related party qua Saharas. Needless to say that upon deposit of the sale consideration the title deeds of the property shall be released by SEBI in favour of the purchaser(s).*
- B
- C                    (c) *The sale consideration of the properties less transaction cost and statutory dues on the same shall be deposited with the SEBI to the extent the same is necessary to make a total deposit of Rs.5,000/- crores inclusive of the maturity value and sale proceeds of the FDs, bonds and securities etc. permitted to be encashed and sold in terms of direction (iii) (a) above. The balance/excess amount of the sale consideration shall be deposited by Saharas in a separate account to be opened in a nationalised bank which deposit shall remain subject to further orders of this Court.*
- D
- E                    (d) *Saharas are also permitted to charge its immovable properties situated in Aamby Valley (Pune), the details whereof are given in Annexure B to IAs No.101-103, for purposes of furnishing a bank guarantee for an amount of Rs.5,000/- crores and/or for deposit of Rs.5,000/- crores if there is any shortfall despite encashment and sales permitted in terms of (iii)(a) and (iii)(b) above.*
- F
- G                    (è) *In modification of the orders dated 26<sup>th</sup> March, 2014, we direct that the Bank guarantees to the tune of Rs.5000/- crores shall be furnished from a nationalised bank or a scheduled bank only. Co-operative Bank Guarantees shall not suffice.*
- H



- (iv) In so far as sale of the three properties situated outside the country are concerned, the question is left open to be determined after the requisite documents/information is made available by Sahara in terms of our order dated 29<sup>th</sup> May, 2014. A
- (v) Keeping in view the importance of the issues that fall for determination in these proceedings and the ramifications that the directions issued by this Court may have as also the fact that one very important order which is sought to be enforced in these proceedings was passed by a three-Judge Bench, we refer these proceedings to a three-Judge Bench to be constituted by the Hon'ble Chief Justice of India. B C
- (vi) We are further of the view that having regard to the nature of these proceedings and the stakes that are involved, we need to appoint an amicus curiae. We accordingly, request Mr. F.S. Nariman, Senior Advocate to assist the Court as an amicus curiae. Shri Nariman shall be free to associate two juniors of his choice to brief him in the matter. D E
- (vii) We direct that the Amicus curiae shall be paid his fee @ Rs. 1,10,000/- per hearing while the juniors assisting him shall be paid Rs. 10,000/- per person for every hearing. The amount so due shall be paid by SEBI by debit to account Saharas. F