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Claim No: CL-2019-000139

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

The Rolls Building
7 Rolls Buildings
Fetter lane
London EC4A 1NL

Date: 07/02/2020

Before:

MR. JUSTICE WAKSMAN

- -

Between:

INDUSTRIAL AND COMMERCIAL BANK OF CHINA LIMITED, MUMBAI BRANCH	**Claimant**
- and -	
ANIL DHIRAJLAL AMBANI	**Defendant**

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- -

MR. BANKIM THANKI QC and MS. LAURA NEWTON (instructed by **White & Case LLP**) for the **Claimant.**

MR. ROBERT HOWE QC, MR. HARISH SALVE SA and MR. PETER HEAD (instructed by **Mishcon de Reya LLP**) for the **Defendant.**

- -

Approved Judgment

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MR. JUSTICE WAKSMAN :

Introduction

1. On 16th December 2019, I gave judgment on the application by the Claimant bank, Industrial and Commercial Bank of China Limited, Mumbai Branch ("the Bank"), for summary judgment against the Defendant, Mr. Anil Ambani ("Mr. Ambani"), or alternatively a conditional order requiring him to pay all or some of the monies claimed into Court. The Bank's claim is upon a written guarantee, executed by a Mr. Shukla, who possessed, according to the Claimant, a valid and binding power of attorney on behalf of Mr. Ambani.

2. The guarantee was in respect of loan facilities to a company called Reliance Communications Limited ("RCom") in a very large amount. The company was incorporated in India, and forms part of a very substantial group of companies, which, ultimately, is entirely owned by Mr. Ambani or members of his family. It is common ground that at least until relatively recently, Mr. Ambani was one of the wealthiest individuals in India. His defence to the Bank's claim on the guarantee, in essence, is that while he signed the power of attorney, it was, at the time, incomplete and invalid, in particular because it did not attach a draft of the guarantee to which it referred, as it had purported to do, and that Mr. Ambani had no intention of providing such a guarantee through an attorney. Instead he thought he was authorising the attorney to sign a non-binding letter of comfort.

3. Mr. Ambani avoided summary judgment, but only just. It is not necessary for me to do anything other than summarise the view I expressed of his case in paragraph 89. I said that I considered that his evidence was inexplicably incomplete, implausible and highly unlikely. It was a case where I was very nearly prepared to give judgment. I thought it highly probable that at trial, his defence would be shown to be opportunistic and false, and on that basis, the application for a conditional order was engaged. Paragraph 4 of PD 24 provides that "Where it appears to the Court possible that a claim or a defence may succeed but improbable that it may do so, the Court may make a conditional order", and paragraph 5.2 provides that such an order includes one which required the party to pay a sum of money into Court, and in the event of non-compliance, the party's claim or defence would be struck out. I found, in paragraph 89 of my judgment, that this was, as a matter of principle, a clear case for such an order.

4. Having decided that, I then directed the exchange of evidence on the question as to what sum, if any, should be paid into Court. It is common ground that insofar as Mr. Ambani seeks to contend, as he has done here, that he is unable to pay the sum claimed, or indeed any sum into Court, or to raise such a sum, so that any conditional order to that effect would stifle his defence, he bears the burden of proof to satisfy me, on the balance of probabilities, that this would be the case. This is now my decision on that issue.

5. I directed evidence to be served as follows: Mr. Ambani was to serve his evidence as to his ability to pay or raise funds by 17th January 2020, with any evidence in reply from the Claimant by 31st January. On 17th January Mr. Ambani's second witness statement was served, and then on 28th January, without any notice, another witness statement emerged from Mr. Kumar, his Indian lawyer. Although out of time, the Claimant agreed not to take any point on that. On 31st January the Bank served its evidence in reply, a lengthy fourth witness statement from Mr. Balmain, and there the matter should have rested. However, in the afternoon of 5th February, just two days before today's hearing, Mr. Ambani served a further, third witness statement, seeking to respond to

Mr. Balmain's fourth. There was no provision for this, and that is so, regardless of what might now be thought to have been an appropriate further provision, giving permission for Mr Ambani to put in evidence in reply.

6. In the event, however, while the Bank's primary formal position was to object to that evidence going in at all, it recognised the reality that in a case of this kind, the Court would probably wish to be apprised as fully as it could be of all the relevant matters. Had the Claimants asked for an adjournment to enable it to put in further evidence in reply, I would have been sympathetic; in fact it decided that it did not wish to have an adjournment and would simply press on with the matter today, having made some, though not complete, submissions in writing on the third witness statement in the time they had before its skeleton argument was served. Accordingly, I gave permission for Mr Ambani's third statement to be adduced.

Background

7. Let me say something about the background. This case has some unusual features. The first, obviously, is the size of the sums involved. The second is the financial position and standing of Mr. Ambani. On any view, a few years ago he was a billionaire. His personal and corporate interests ranged far and wide, both in India and abroad, including here in the UK. His mother and his two sons and to some extent his wife are, themselves, involved in or associated with, those businesses, one way or another. His brother, Mr. Mukesh Ambani, is presently reputed to be the richest man in Asia, and he has assisted Mr. Ambani in the past. For example, when Mr. Ambani, as a director of RCom, was facing imprisonment for three months for contempt of Court on the part of his company, for which he would be liable as a director, Mr. Mukesh Ambani, through one of his companies, bailed out RCom and thereby enabled Mr. Ambani to escape prison for contempt by paying out the sum of around $76 million. I shall explore that matter in a more detail below.

8. Mr. Ambani has, and continues to have, a very lavish lifestyle. He had at one time the use of a helicopter, but more recently has had the use of a Bombardier Legacy 650 private jet, the use of around 11 cars worth about $3 million, the use of a yacht and the occupation of two floors of a very large and extremely prestigious building in South Mumbai. He has also the present financial wherewithal to have instructed and continue to instruct, leading and junior counsel in relation to these applications and this case. Notwithstanding that, Mr. Ambani's core point now is that while it is true that some years ago he had assets worth billions of dollars, all of that has disappeared with the financial crisis which affected the Indian telecoms industry in which he was centrally involved, such that, in effect, he is now broke. He says he cannot obtain financial assistance from anyone else, in particular members of his family; accordingly, the Court should not make any conditional order against him. Indeed, on the figures he presents, it is said he is massively insolvent and actually bankrupt, although he has not applied for any bankruptcy order in India. I was told through Mr. Howe QC, on instructions, that this may be because there are some technical matters which would arise. There appear to be differences between Indian federal and local law, but either way he has not applied for any form of bankruptcy order in India.

The Law

9. I now turn to the law. A very helpful and recent exposition of the principles applicable to how the Court should approach the making of a conditional order for payment into Court is set out by Males LJ, giving the lead judgment in *Gama Aviation (UK) Limited v*

Taleveras Petroleum Trading DMCC [2019] EWCA Civ 119. At paragraph 42, the learned judge states that in relation to those paragraphs of PD 24, to which I have referred:

> "It is not necessary to show that a defence is 'shadowy' or 'dubious in its *bona fide*s' ... although if a defence is shadowy or of doubtful good faith that will no doubt be a relevant consideration in exercising the power to make a conditional order and deciding the amount of any security which should be ordered."

10. He then says in paragraph 43:

> "... there is a category of case where the Defendant may have a real prospect of success, but where success is nevertheless improbable and a conditional order for the provision of security may be made. This is the typical case where a conditional order may be made requiring the provision of security for the full sum claimed or something approaching it."

11. He then said at paragraph 45 that the following principles were established:

> "... where the Defendant has a real prospect of successfully defending the claim, the Court must not impose a condition requiring payment into Court or the provision of security with which it is likely to be impossible for the Defendant to comply."

12. He went on to refer to the well-known dicta of Lord Diplock in *MV Yorke Motors v Edwards* [1982] 1 WLR 444:

> "'that would be a wrongful exercise of discretion, because it would be tantamount to giving judgment for the plaintiff notwithstanding the Court's opinion that there was an issue or question in dispute which ought to be tried'".

13. That case is also referred to in *Goldtrail Travel Ltd (in liquidation) v Onur Air Tasimacilik AS* [2017] UKSC 57, [2017] 1 WLR 3014, to which I refer below.

14. Males LJ's judgment continued as follows:

> "46. Second, the burden is on the Defendant to establish on the balance of probabilities that it would be unable to comply with a condition requiring payment into Court ...
>
> 47. Third, in order to discharge that burden a Defendant must show, not only that it does not itself have necessary funds, but that no such funds would be made available to it, whether (in the case of a corporate Defendant) by its owner or (in any case) by some other closely associated person. This third principle derives from the well known observation of Brandon LJ in this Court in the *Yorke Motors* case which was approved in the House of Lords and re-affirmed in *Goldtrail*:
>
> > 'The fact that a man has no capital of his own does not mean that he cannot raise any capital; he may have friends, he may have business associates, he may have relatives, all of whom can help him in his hour of need.'

> 48. It is important in the case of a corporate Defendant to keep well in mind the question is not whether the company's shareholders can raise the money but whether the Defendant company has established that funds to make the payment will not be made available to it by beneficial owners."

15. He then cites Lord Wilson in *Goldtrail*:

> "… Has the appellant company established on the balance of probabilities that no such funds would be made available to it, whether by its owner or some by other closely associated person …
>
> In cases, therefore, in which the respondent to the appeal suggests that the necessary funds would be made available to the company by, say, its owner, the Court can expect to receive an emphatic refutation of the suggestion both by the company and, perhaps in particular, by the owner. The Court should therefore not take the refutation at face value. It should judge the probable availability of the funds by reference to the underlying realities of the company's financial position; and by reference to all aspects of its relationship with its owner, including, obviously, the extent to which he is directing (and has directed) its affairs and is supporting (and has supported) it in financial terms."

16. That is specifically in relation to companies, but the need to consider the realities of the situation seems to me to be pertinent to non-corporate Defendants as well. Finally, Males LJ said this:

> "51. Fourth, and despite the fact that the Rules expressly contemplate the possibility of a payment condition being imposed, it is not incumbent on a Defendant to a summary judgment application to adduce evidence about the resources available to it, at any rate in a case where no prior notice has been given that a Claimant will be seeking a conditional order."

17. I then turn to some recent examples. First of all, the Claimants refer to *Kazeminy & Others v Siddiqi & Others* [2009] EWHC 3207 where Teare J required the Defendants to pay US$25 million into Court. He said that it is appropriate, where it is improbable the defence will succeed, to order a payment into Court:

> "A trial, which it is probable that the Claimants will win, will delay recovery by the Claimants of their loans and will be expensive. In such circumstances a Court may order payment of the sum claimed into Court."

18. Here he said the Defendant had not given full or frank disclosure, but what he had said enabled the Court to infer he must have very considerable resources available to him. He said:

> "The history of his or his family's loans to the companies and the fact that he is to continue funding the companies at about £500,000 a month suggests that a payment of $25m may very well be within his abilities."

19. That was not the end of the story because there was a subsequent hearing before Teare J when the matter was revisited on the provision of further evidence. The upshot was a second judgment where Teare J said this:

> "35….$25m is a very large sum to be ordered to be paid into Court. The fact that two of the corporate Defendants have been ordered to be wound up suggests that there are indeed funding difficulties. Similarly, the OEM contract ... suggests that Mr. Siddiqi requires outside support to finance his companies. Although the magnitude of his difficulties is difficult to assess in circumstances where, for the reason I have given, Mr. Siddiqi has not been as forthcoming as to his assets as he ought to have been, there must be a real risk that an order requiring a payment in of $25m will stifle his defence.
>
> 36. In the last two and a half years Mr. Siddiqi has provided about £16m to his companies. He has failed to explain how part of that, perhaps as much as £6.5m, has been funded. Moreover, very recently he has made substantial payments to other creditors ... of about £4m.
>
> 37. I have therefore reached the conclusion that an order that Mr. Siddiqi pay into Court a sum of £5 million is, on the material before me, likely to be possible and not such as will stifle his defence."

20. I turn, thirdly, to the case of *Bank Leumi v Philip Robert Akrill* [2014] EWHC 4341, a decision of HHJ Dight, sitting as a Judge of the High Court. Starting at paragraph 15, the judge sets out a number of the applicable provisions and principles, most of which I have already recited. At paragraph 25, he referred to the decision of the Court of Appeal in *Dubai Islamic Bank PJSC v PSI Energy Holding Co PSC & Others* [2011] EWCA Civ 761. Tomlinson LJ said the following there:

> "'Where a party seeks to suggest that he is devoid of assets and yet able to maintain an expensive lifestyle and to fund litigation on the basis of loans from his family or other third parties, it is incumbent upon him in my judgment to provide details of the nature of those loans, the terms upon which they are granted and in particular to condescend to some further detail in relation to the efforts he has made in order to obtain further funds from the same sources.'"

21. This is all in the context of security for costs, which the judge in *Bank Leumi* described as analogous for these purposes. Tomlinson LJ went on:

> "When no such details are given and when the evidence is at such a high level of generality as to say that the source of living expenses and legal expenses is mostly loans from family and family affiliated companies and third parties without any further details volunteered, it is in my judgment possible and in many cases appropriate for the Court to draw the double inference on which Langley LJ spoke on the *Noga* case, which is to the effect

> both that there are undisclosed assets and also that the failure to disclose them leads to the inference that they have been put out of reach of creditors including of course a potential creditor for costs."

22. HHJ Dight went on to say this about another case, to which I shall refer:

> "26. In applying what his Lordship said there, it seems to me that one must also have regard to the difficulty expressed in the *Anglo-Eastern* case of proving a negative, i.e. that the respondent does not have the assets which the applicant alleges ...
>
> 28. The sum which ought to be paid into Court must be one which (a) tests the Defendant's *bona fides*, (b) discourages him from delaying the proceedings and (c) provides some security to the Claimant, but (d) is one which I consider on the balance of probabilities is one which he is able to pay, even if that means looking to third parties to raise the sum or part of it."

23. He refers to one counsel in his case, stating that part of the purpose is to have an earnest on the part of the Defendant or, as put more colloquially by other counsel, that the Defendant should put his money where his mouth is.

24. I then turn briefly to *Goldtrail* itself, a decision of the Supreme Court. Lord Wilson said that:

> "15. There is no doubt - indeed it is agreed - that, if the proposed condition is otherwise appropriate, the objection that it would stifle the continuation of the appeal represents a contention which needs to be established by the appellant and indeed, although it is hypothetical, to be established on the balance of probabilities: for the respondent to the appeal [for which one reads Claimant here] can hardly be expected to establish matters relating to the reality of the [other side's] financial situation of which he probably knows little……
>
> 16... [the] Courts can proceed on the basis that, were it to be established that it would probably stifle the appeal, the condition should not be imposed."

25. Then at paragraph 17 he refers to the dicta of Brandon LJ in *Yorke Motors v Edwards*, to which I have already referred.

26. It was submitted before me in argument today on behalf of the Claimants that there is a general point, which is that a Claimant may have (and here it is said has), little visibility of the Defendant's financial affairs, particularly where they are complex and range across a whole variety of companies and interests. To that extent the Claimant, and therefore the Court, has to rely upon the transparency to be expected of the Defendant for relevant disclosure, and also, in particular in respect of funding from other sources as well. I agree with that proposition.

27. The Defendant has pointed to the earlier decision of the Court of Appeal in *Anglo-Eastern Trust Ltd. & Another v Kermanshahchi* [2002] EWCA Civ 198. It needs to be mentioned that this was a case where the Court of Appeal disagreed that the judge was entitled to

impose a condition without hearing evidence of means. By the time the matter reached the Court of Appeal, the evidence of means that the parties, in particular the Defendant, wished to rely on, had been put in; therefore the Court of Appeal had to consider that matter afresh. In his leading judgment, Park J stated as follows:

> "55. On Mr. Kermanshahchi's evidence of means generally Mr. Ashe submitted that we should accept it. He pointed out the difficulty of proving a negative. Thus it is almost always possible for the other party to suggest some conceivable source of funds which the evidence has not closed off. For example, in this case, although Mr. Kermanshahchi has said his relatives and friends are unable to assist further, there is no evidence from them to confirm this. He has said what the balances in his bank accounts are, but he has not exhibited the Bank statements. He has not produced evidence from his bank that it will not lend him the £1m required to comply with Judge Hegarty's order. Mr. Ashe said that the Court ought not, because of allegations of missing evidence of that nature, to decline to accept the evidence which it does have. It is not acceptable for a Claimant like A-ET to 'go on asking for corroboration after corroboration.' I accept this submission.
>
> "56…….. I conclude that, on the balance of probabilities, Mr. Kermanshahchi does not himself have £1m or anything like it. He would only have it if he has lied outrageously and has large secret funds secreted away somewhere. I am not prepared to find that he has, for all that I have sympathy with Mr. Smith's criticism that Mr. Kermanshahchi ought not to have kept quiet in his fourth witness statement about the transfer of the half interest in the Highgate property to his wife. Further, I consider that Mr. Kermanshahchi could not borrow £1m on the strength of his own personal covenant and any assets of his own which he could charge by way of security.
>
> 57. Mr. Kermanshahchi has given evidence that his wife and sons are unable to help further. There is no direct evidence from them, and it is possible that between them they could raise £1m in cash if they really set their minds to it. However, A-ET's claim is only against Mr. Kermanshahchi: it has no claim against his wife and children. In my opinion it would be excessive for the Court to put pressure on them to put as much as £1m of their own money or property at risk, particularly given the judge's view that it is improbable that Mr Kermanshahchi's defence to A-ET's claim will succeed. If the judge had given summary judgment against Mr Kermanshahchi, A-ET would have had no right to enforce the judgment against Mrs. Kermanshahchi or her sons, and it would be a remarkable thing if the Court made an order which, because she and her sons did feel pressurised to put up £1m, placed A-ET in a stronger position to enforce a judgment in its favour. I would feel differently about an order which took into account the assets of Mrs. Kermanshahchi and the

> sons if the amount concerned was not £1m but a much more modest sum."

28. A number of things need to be said about this case. First of all, what can properly be inferred or not inferred for the purposes of considering whether the Defendant has discharged the burden of showing that there are no available funds obviously depends upon the context of the individual case, the facts alleged and the actual evidence before the Court. What inferences the Court could or should draw where the evidence is unsatisfactory, as regards detail, or whether it is incomplete, must, at the end of the day, depend on the individual circumstances of the case. I do not read what Park J has said in *Anglo-Eastern* to contradict that. Equally, what is a request for "corroboration upon corroboration" and what is not cannot be the subject of a general rule. Again, it depends on the context of each individual case.

29. There is a further point, however. I do not read from paragraph 57 some general prohibition on making a conditional order where the likely source of payment may be someone other than the Defendant, because if that is the case, it runs completely counter to the principles which have been confirmed in the much more recent decisions of the Court of Appeal to which I have referred. It is plain from the cases referred to above that the Court will want to examine the question of whether others, apart from the Defendant, can assist the Defendant to raise the relevant sums.

30. Let me make some other, more general, observations on the law. As I have just indicated, subject to the general principles laid down in *Gama Aviation*, how the Court disposes of the conditional order application has to be highly fact-sensitive; it is based on the evidence, where the burden of proof is on the Defendant. So, for example, to say that a payment-in of £1 million is very large indeed may be true in some cases, but not in others. It is not enough simply to say, as a reason for not making a payment-in of a substantial amount, that there are other cases where the amounts were very much less, whether it be $5 million or £12,000. It all depends on the case concerned, and in this respect everything is relative.

31. The context here, of course, is of extraordinarily large sums, at least in terms of the level of the guarantee, which the Claimant says was provided, and the personal wealth, or the prior personal wealth, of the Defendant and his family, as in fact evidenced by his lifestyle. The question remains, at the end of the day, the extent to which the Defendant can satisfy the Court that he is unable or unable, in part, to pay or raise the funds, and in the light of all of that, the Court, if it decides to order a payment-in, must order one which is proportionate and effective.

32. So far as the purpose of the payment-in is concerned, I do not, for myself (though it does not make any real difference to my decision here), think there is much in the point that was ventilated by HHJ Dight in passing in *Bank Leumi*, that insofar as payments into Court were made to encourage the Defendant to get the case on more quickly, that is no longer a purpose, because active case management means that this is going to happen in any event. It seems to me the real point here is the "putting the money where the mouth is", in the sense that if the Defendant wants to run a defence about which a Court has expressed serious doubts, then it needs to show some earnest of its intention to do so.

33. Equally, in that regard, it was suggested at one point in argument that a payment-in is not necessary here in any event because of course Mr. Ambani will defend the case, since if he does not, at some stage there will be an unless order or some other order made against him with which he will not comply, his defence will be struck out, that will be the end of

the matter and the Claimant will win. There is nothing in that point. It could be said in any case of any Defendant facing a conditional payment order, that the Defendant would want to defend and push on the case in any event so there is no need for a payment-in.

34. Another suggestion made today by Mr. Howe was that one could almost automatically draw an inference, in a case of this kind, that a friend or relative would not be disposed to assist a Defendant to pay into Court, where there was a likelihood, at least as perceived by the Court, that the defence would fail at the end of the day. Notwithstanding a passing reference to this at paragraph 57 of the judgment of Park J in *The Anglo-Eastern* case, I do not accept that this is a general principle; if it was it would run counter to the general principle in *Yorke Motors v Edwards* (and confirmed in later cases) about looking elsewhere in precisely this sort of case, where the investigation into the ability to pay money into Court is almost always typically triggered by a finding that the defence is improbable.

35. In any event, the motives of friends or family can range widely. Of course, if a Defendant in a particular case said that he had had a specific discussion with a potential funder, who said that they were not willing to assist, precisely because they thought they might be wasting their money, that would be different, but there is no evidence of that kind in this case.

Corporate Background

36. I then turn to say something briefly about the corporate background here. Paragraph 1 of my judgment from 16th December reads thus:

> "The Defendant, Mr. Anil Ambani ... is an Indian citizen and Chairman and founder of the Reliance Group, one of India's largest private conglomerates. The group includes Reliance Communications Limited ('RCom')", which was the principal debtor here. "Mr. Ambani, together with family members and trusts, holds at least 67.86% of the shares in RCom. ... in 2012 the Reliance Group had 100,000 employees, total revenues of US$10 billion, operating profits of over US$2 billion and total assets of over US$10 billion. It was a leading presence over various sectors including telecommunications, energy and financial services."

37. The figure of 67.86% is slightly higher than the figure of 65% in relation to the holding company in the evidence before me now, but I do not think anything turns on that.

38. A document to which I will make a number of references, called the Statement of Net Worth, certified as accurate by Mr. Ambani's accountant in India, was exhibited to his second witness statement, dated 15th January 2019. At this stage, I simply refer to the company organogram at page 11. That shows that 65% indirect interest of Mr. Ambani in RCom via the head company of the group, Reliance Innoventures Private Limited, which I shall call "Innoventures".

Some Overarching Points

39. Let me then make some overarching points. Mr. Ambani's key contention, relying on the Statement of Net Worth (although itself now a year out of date), said that while, in March 2012, he was personally worth $3.765 billion, he is now massively insolvent, with a net personal deficit of $305 million.

Present Income

40. In that context, he then went on to state, at paragraph 18 of his second witness statement, in terms of his present financial position, that in 2018-2019, his income was the equivalent of £12.3 million. A very modest proportion, about £600,000, came from a company called Reliance Infrastructure Limited, for what have been referred to as professional fees; but the rest of it, largely, came from the sale of shares which he held in his brother Mukesh's company, Reliance Industries Limited, which were sold on 6th February 2019. It was said there that those monies were then paid to Innoventures by way of a loan so that it could meet its debt servicing payments.

41. As at the date of this witness statement, that is January this year, he said that his income by way of fees this year will be about £550,000, which he said "will be used for my day-to-day living expenses". So far as those living expenses are concerned, they were put elsewhere in the Statement of Net Worth as being in the region of $187,000 a year.

42. In respect of that, Mr. Balmain, in his fourth witness statement, was well entitled to ask, rhetorically, as it were, how Mr. Ambani's apparently lavish lifestyle, including the use of the private jet and so on, has been financed out of that modest income, and the general expenses to which he had already referred, not to mention the fact that he has had to pay legal fees in respect of the litigation here, which Mr. Ambani now puts, so far, as $700,000.

43. One then turns, for an explanation of that, to Mr. Ambani's third witness statement at paragraph 44. What he says there, in response to Mr. Balmain's point, is:

> "The expenses for the proceedings of $700,000 are being paid out of my current year income, and in lieu of my dues and expenses from Reliance Infrastructure Limited, and Reliance Communications (UK) Limited."

44. That is not a very clear statement. It is not clear if he was saying that his current year income is something that he would otherwise have been getting from Reliance, or whether there was some further money from Reliance instead of the dues and expenses, or whether one should add the two together or one is meant to be instead of the other. It is also quite difficult to see how the company would be paying the legal fees in respect of this personal litigation, in lieu of expenses. It might be different if he was stating the amount of money he was getting from Reliance, and then simply spending all of that money on legal fees. But that does not appear to be what he is saying.

45. However, either way, there is no other source of income specifically which is mentioned, and given the lifestyle that he leads, and the legal fees that he has, and the underlying amounts of $187,000 for maintenance and expenses which he said, I do not think that this adds up.

Evidence about Guarantees

46. Next I refer to part of his evidence in seeking to resist summary judgment, where he gave an explanation for why he did not and would not have agreed to give a personal guarantee anyway. At paragraph 39 of his first witness statement, he said this:

> "I was certainly aware that a comfort letter is thus a very different document to a personal guarantee. I would, in no event [and I stress "in no event"] have agreed to give a personal guarantee

> for the debts owed by a listed entity, much less an unlimited guarantee for $900 million."

47. However, in his second witness statement, at paragraph 17, he said this:

> "My total assets have an estimated value of $9 million, down from $3.8 billion but they are significantly outweighed by my total liabilities, comprising the $113 million I owe on personal loans and the US$200 million I owe under a personal guarantee given to the State Bank of India in respect of which the State Bank of India has issued proceedings."

48. It is plain from the underlying documents that that guarantee liability was in respect of loans made to RCom and one of its subsidiaries in the respective amounts of about $80 and $89 million respectively in 2016.

49. That statement is completely at odds with what he had said in paragraph 39 of his first witness statement to the effect he would not contemplate giving a guarantee of this kind. Mr. Balmain made that point at paragraph 20 of his witness statement. Tellingly, while Mr. Ambani addresses many of the points made by Mr. Balmain when he produced his further witness statement, he is silent on this one. In my judgment, the Claimant is right. He has been caught out on a lie and can say no more about it.

50. However, in his skeleton argument, Mr. Howe QC, for Mr. Ambani, stated, in relation to this point at paragraph 31:

> "... the latter guarantee was given in September 2016 whereas Mr. Ambani's first witness statement was addressing the position as of February 2012 - there is no inconsistency and given the decline in the Reliance Group's fortunes between 2012 and 2016 it is unsurprising that additional security was being sought."

51. The trouble with speculation of that kind is that it is entirely unsupported by any evidence. The only person who could give evidence to seek to explain the discrepancy, if he could, would have been Mr. Ambani. He had the opportunity to do so, his third statement was allowed in, and he has declined to address the point; the inference must be that he cannot. I agree with the Claimant that this episode strongly suggests that Mr. Ambani will, if necessary, say one thing in one context (resisting summary judgment), and another in another (resisting a conditional payment order).

Contempt Proceedings in the Supreme Court of India

52. I then turn to a different matter, which is a judgment of the Supreme Court of India, dated 20th February 2019. This concerned a failure by RCom, among others, to pay a sum of $76 million, which had been the subject of an undertaking to the claimant, Ericsson, in connection with arrangements made, effectively, to avoid an insolvency process.

53. Ericsson brought a contempt petition against RCom and others. It arose because the basis of the settlement reached with Ericsson was the giving of an undertaking to the Court that the money should be paid. There was a Court order on 30th May 2018 that certain payments be made within a period of time, and that an undertaking be proffered to that effect. However, while the undertakings were provided, they had been qualified by saying that the monies would be paid upon the sale of assets of the company, which is not what the Court had ordered, and hence the first contempt application.

54. However, in an affidavit of 3rd August, Mr. Ambani, on behalf of RCom, misdescribed what the order had required, saying that it was limited to moneys coming from the sale of assets, and the undertaking to that extent was limited. I just read a few sections from the decision of the Supreme Court:

> "17. The undertakings given on the footing that the amount will be paid only out of the sale of assets was false to the knowledge of the three Reliance companies. This affects the administration of justice and is therefore a contempt of Court….
>
> 19. There is no doubt whatsoever that the three Reliance companies have wilfully not paid the sum of money and have broken the undertakings to the Court…
>
> 20 …The reply affidavit [which came from Mr. Ambani] clearly demonstrated the cavalier attitude of the deponent of this affidavit to the highest Court of the land.
>
> 21. To say that the relevant sum would be paid only out of the sale of assets of three Reliance companies is a deliberate misstatement, made in the undertakings, as well as in the applications for an extension of time, which was done with the purpose of circumventing the orders of the Court. We are of the view that on the facts of the present case, wilful default has been made out."

55. The ultimate order made by the Court was that RCom was directed to purge its contempt of Court by paying Ericsson the sum of the $76 million within four weeks. In default of payment, the chairmen who had given the undertakings, which included Mr. Ambani, would suffer three months' imprisonment. In addition, there would be a fine.

56. The necessary funds came in at the eleventh hour, and on any view their ultimate source was Mr. Ambani's elder brother, Mukesh. In a report in the *Indian Economic Times*, it was put in this way:

> "Making a dramatic intervention. Mr. Mukesh Ambani saved his younger brother Anil from imprisonment by paying money owed by him to Ericsson on Monday. The bailout from the world's 13th richest man came literally at the 11th hour because Tuesday was the deadline to clear the money."

57. Then importantly, in a public statement Mr. Ambani said as follows:

> "My sincere and heart felt thanks to my respected elder brother, Mukesh, and Nita, for standing by me during these trying times and demonstrating the importance of staying true to our strong family values by extending this timely support. I and my family are grateful we have moved beyond the past and are deeply touched with this gesture."

58. As to all of that, Mr. Ambani said in his second witness statement that it was wrong to suggest that his brother Mukesh had personally paid $76 million on Mr. Ambani's behalf to Ericsson, and he recited the order of the Court. He said that, in fact, the payment was made by Reliance Realty Limited on behalf of RCom, and that company had raised the funds by leasing a part of the property that it held to an associate company, Reliance

Industries Limited. It is common ground that the ultimate owner of Reliance Industries Limited is Mr. Mukesh Ambani.

59. Mr. Ambani went on to say:

> "The press release only captured the gratitude expressed by me as chairman of RCom to chairman and director of Reliance Industries, Mr. Mukesh Ambani, and his wife respectively."

It is not apparent that the press release which I have already quoted is limited in such a way.

60. Mr Ambani went on to say:

> "The Ericsson matter pertained to a corporate liability [which is true], and it was done through corporate transactions. No funds were provided by Mukesh to me in a personal capacity, nor was there any gift."

61. That is all very well, but the fact of the matter is that if there was no payment made which would enable RCom, at the end of the day, to make the required payment of $76 million, Mr. Ambani would go to prison; and the reality is that Mr. Mukesh, whose company was the one that provided the initial funds, came to the rescue. The fact that the underlying debt is owed by RCom to Ericsson, which was then discharged, is neither here nor there.

62. Indeed, as was accepted by Mr. Howe QC in argument, although there was a transaction which involved a contract or a lease to use premises, the trail was that Mr. Mukesh procured one of his companies to advance the monies to one of Mr. Ambani's companies, which then went to RCom, so that the payment could be made.

63. Quite apart from the fact that in my view Mr. Ambani has put a misleading spin on the role of his brother here, the fact that Mukesh Ambani was prepared to assist his brother's company to pay the debt, and thereby enable his brother to escape going to prison, to the tune of $76 million, is material to the question of funding available to Mr. Ambani now for a payment into Court. I will be dealing with that later, but I note at this stage that Mr. Mukesh Ambani's current wealth is estimated at about $55-57 billion.

Seawind

64. Let me now return to another matter. Mr. Ambani lives in or occupies an apartment block in a very wealthy part of South Mumbai called Seawind. Mr. Balmain had pointed in his evidence to press reports saying that the Ambani family owned the entirety of this 17-floor building. It was also noted that there are two other companies, of which Mr. Ambani's two sons are directors, and they are shown as owning two apartments respectively in that building. It was said that the family, and certainly Mr. Ambani, had lived there for several decades. Mr. Balmain made the point that on the basis of the $187,000 per year, which is what Mr. Ambani said he had to cover his maintenance and expenditure, it would be highly unlikely to be suffcient to pay the rent in such a prestigious building.

65. Mr. Balmain made the point that it was difficult to get further information about the true ownership, because the owners all appeared to be investment entities or shell companies, so it was difficult to see who the ultimate beneficial owner was.

66. As to all of that, Mr. Ambani has come back in his third witness statement. He says that Mr. Balmain did not offer any evidence of his interest in the building. He says:

> "I am not the ultimate beneficial owner of any companies which are the owners of the Seawind buildings. I have rent-free tenancy rights to two floors of the said building, which I occupy and pay maintenance expenses for the same. Such maintenance expenses are reflected in my outgoings."

67. That paragraph is revealing, more for what it does not say, than what it does say. He does not say to whom he pays the maintenance expenses, or what he means by a "tenancy right", which he appears to have acquired free of charge; he does not explain why, on his evidence, an unconnected entity should allow him to have two floors of this prestigious building rent-free; he does not say who the other occupiers are. He obviously knows about these matters, and there are only two possibilities: either the party who has allowed him to stay there rent-free is a connected entity of some kind or other, perhaps another company owned by the family, in which case that is highly relevant; the only other alternative is that it may be an unconnected party who is providing him with remuneration in the form of not having to pay rent, in which case he is not disclosing his income. Either of those consequences are unsatisfactory, and his evidence is unsatisfactory in this regard.

Conclusion on Overarching Points

68. Just taking that selection of matters, without going any further in my judgment, they suggest that whatever Mr. Ambani says now in the present context has to be approached with considerable circumspection. The difference at this stage from the summary judgment stage, of course, is that he bears the burden of proof.

Other Points

69. I now turn to the detail of some other matters. Mr. Ambani has given, in his second witness statement, a brief history of what happened to the telecommunications industry in India since 2012. He explains why it has declined because of a change in government policy which led to the exit of all major players in the market, as they were not able to withstand their new financial obligations. There was then a new entry into the industry, with which other companies found it difficult to compete. All of that led to declining cash flow, so that seven out of the twelve telecom operators exited the business. RCom shut its business in November 2017. Other major companies like Tata and Vodafone wrote off their investments as well. None of that, in terms of a history of the telecoms industry, is in issue before me.

70. What is in issue is what he says flows from that. First of all, that, as a result of that, he now has a negative net worth and second, that as a result he does not hold any meaningful assets which can be liquidated for the purposes of these proceedings.

71. I take Mr. Howe QC's general point that on the basis of a collapse of companies of this kind and the value of shareholdings, it might be thought, as a starting point, that Mr. Ambani could not raise $700 million to pay into Court. However, what he can raise ultimately turns on the quality of his evidence about the full extent of his own assets and about the availability of funds from others and what sum, if any, he should pay out against that background.

72. Turning to some more detailed matters let me first deal with Ambani Enterprises Limited. This is not a company that was identified in the organogram. What was said here is that Mr. Ambani was a 99.9% owner of Ambani Enterprises, which had not been mentioned. The other 0.1%, which is insignificant, was owned by AAA Advisory Services Limited, presumably also connected with Mr. Ambani. Mr. Ambani's response in his third

witness statement was to say there was no need to mention it, because all of its capital in terms of its investments was actually invested in Innoventures, which is, in any event, of no value. Whether that is right or not, for my part I cannot see why that company should not have been mentioned; where its investments go does not alter the fact as to its existence. On any view, it is worth noting that as at March 2018, it is said that, in fact, Mr. Ambani is personally supporting Ambani Enterprises. It is not at the moment clear to me how that is happening. The documents also show that this company has investments in other companies.

73. There was a further point made by Ambani Enterprises about what its assets were. The Claimants' investigations, which seemed to have involved downloading various public filings, thought that assets were worth the equivalent of $7.8 billion, but in his third witness statement, producing what appeared to be hard copies of the actual filings, Mr Ambani says that it was $7.8 million. It is certainly not possible for me to gainsay that at the moment. There does appear to be a problem about whether commas or decimal points had been missing from the downloaded file, so I am not going to say anything more about that.

74. Let me turn to another matter which concerns lifestyle and, first of all, deal with a company called Ammolite. There had been reports that Mr. Ambani had gifted to his wife Tina a luxury motor yacht. He said that is not right. The newspaper reports said that it had originally been bought for $56 million. Mr. Ambani's evidence is that the yacht, which appears still to be there and used, is in fact owned by a company called Ammolite, which is itself owned by Reliance Capital and Reliance Land Private, which would form part of the Reliance Group. The yacht itself was managed by another Reliance company called Reliance Transport and Travels ("RTT"). Mr. Ambani also says that the yacht was only worth $20 million at acquisition some 11 years ago and will be worth less than that now. He does not deny the corporate ownership, but he says "This asset as such has been factored into the net worth of Innoventures." I do not accept that this makes the point irrelevant. First, it is an asset and it ought to have been disclosed separately. Secondly, if it was right that there was no need to mention it because it was all subsumed within Innoventures, it is very difficult to see why one needed to mention any company at all in this organogram as opposed to Innoventures itself. This argument is manifestly unrealistic, especially where there are movable assets.

75. Mr Ambani does not make any reference to who uses the yacht now, how much its running costs are and who pays them. That is highly relevant to a Defendant who is pleading poverty. On the assumption that he is still making use of it, either he is defraying the running costs to compensate the company that owns it for effectively his hiring it, in which case we have seen no detail about that; alternatively, the company appears to be misusing company assets by allowing him to have it free of charge. Either way that is unsatisfactory.

76. I now turn to the private jet. There is no doubt that Mr. Ambani makes use of it. It was not mentioned in his second witness statement, save that the Statement of Net Worth has said that RTT's include "aircrafts" (plural) taken on long lease. It is true that RTT may well not necessarily own it outright and that it has it on a long lease. That is hardly surprising in the world of aircraft. Notwithstanding that, and probably to reflect the realities, the Statement of Net Worth actually describes it as an asset of RTT. Again, corporate ownership is not the point. If he has been using the private jet for his own purposes and continues to do so, that is highly relevant since on the face of it, the main company is insolvent, and that is not something which he deals with at all. What he has

not done is deny paragraph 40 of Mr. Balmain's witness statement, which says that he frequently makes use of one of his aircraft along with immediate family members.

77. I now turn to the cars. Again, as Mr. Balmain points out, there had been no reference initially to 11 cars, which Mr. Ambani has the use of, worth about $3 million. What he says in paragraph 43 is this.

> "I do not own any cars and as is customary cars owned by various companies, i.e. corporate assets, are given for official and personal use from time to time."

78. I regard that as misconceived. Of course the companies may own the cars but one questions, first of all, in his current financial circumstances, why he needs the use of 11 cars, secondly, how they are being funded by those companies and, thirdly, if he is able to direct his companies to make 11 cars available at all times for his personal use, why he cannot direct them to sell them and raise some money.

79. In that regard, Claimants' skeleton argument correctly refers to Tomlinson LJ's observations in the *Dubai* case (see above) as "apposite on the basis of a dichotomy between such a lavish lifestyle and his alleged lack of assets". I agree.

80. Indeed, on Mr. Ambani's case, his companies are all misusing their assets by supplying to them, effectively, free of charge or nearly so. That is, the yacht, the cars, the aircraft, and the two floors of the Seawind building. One is bound to ask forensically if he can arrange his affairs thus, why he cannot arrange his companies to sell those assets and provide him with the money to pay into Court. He cannot have it both ways. He cannot plead poverty personally and then disown, as it were, any other items of personal use on the basis that they are corporate assets and irrelevant.

81. Let me then deal with some other matters. I have already adverted to what appear to be irregular corporate activities. That has a resonance to a different matter, which is that Mr. Balmain has pointed out that there seemed to be some irregularities in the intercompany dealings within the Innoventures group. Mr. Balmain pointed out that PwC resigned as auditors of Reliance Capital in June 2019, having cited concerns over improper diversion of funds. While Reliance Capital for its part said that there was no reason for what it described as "PwC's abrupt departure" and has said there was nothing wrong, one can hardly take no notice of the fact that the auditors departed as they did. Mr. Ambani, I think somewhat ambitiously, described the company's own published take on these events as "official". It is not official at all. It may be official in the sense that it is what the company has published, but it does not mean that these are official findings or anything of that kind. That is particularly so when the media reports also indicated that Grant Thornton, as the investigating forensic accountants found anomalies in loans from the Reliance Home Finance Company which were said to have included related loans: see bundle E3 page 159. Again, one can hardly ignore such findings. Mr. Howe QC suggested that even if there were some truth in these matters, that is all on the part of the companies; it does not necessarily have any reflection on Mr. Ambani. That is hopeless in my judgment. It is perfectly clear through all the evidence we have seen that Mr. Ambani is not some form of titular chairman who really has nothing to do with these companies. He is extensively and actively involved in them. To suggest that if there were any serious deficiencies in the companies' corporate governance he was not aware of it is wholly unrealistic in my view.

82. It may be the case, as a matter of Indian accounting practice, that it is not necessary to include the detail of intercompany transactions when looking at a consolidated picture

with regard to the head company; but the real point here is that this sort of intercompany activity, referred to above, adds weight to the notion that in the context of where Mr. Ambani is the ultimate beneficial or majority beneficial owner, and is so involved in all of these companies, a full picture of their particular transactions is not being presented.

83. I now turn to the shareholding in Innoventures. Mr. Ambani says that he has a 65% interest in Innoventures, but Mr. Balmain pointed out that there was in fact a further 33% held jointly by him and his mother which had been discovered by the Claimants' investigators. The Claimants' evidence, as far as Indian law was concerned, was that each of the joint shareholders would have ownership rights. In response, Mr. Ambani does not deny this as such, but he says that only the first mentioned joint shareholder, which in this case was his mother, would have voting and dividend rights. He also went on to say, and I quote: "Further, Mrs. Kokila Ambani", his mother, "has effectively paid in full the purchase consideration for acquiring the equity stake of 33% in Reliance Innoventures." A number of points arise out of that. It remains the case that his interest, via the 33% with his mother, was not mentioned. Whatever is the true position about access to voting and dividend rights, he has not suggested that his interest is of no value. However, of course, if it is of no value, then it is completely unclear why he should be a joint shareholder with his mother anyway, especially since, on his evidence, she "effectively paid in full" for the acquiring of the equity stake. On the other hand, if she did not pay for all of it, then the only person who could have paid for it would be Mr. Ambani himself. All of this is very opaque in my view.

84. A further point was made about Reliance Big Entertainment (Singapore) ("RBE") which had a 28.5% stake in an English company, Codemasters, which was sold in June and November of last year for about $88 million at something of a discount to the closing prices for the shares on the relevant days. These proceedings commenced in March and I think this application for summary judgment was made in May, the November payment having come very shortly after the application for summary judgment was heard by me. The Claimants say that this is suspicious and rather looks as if Mr. Ambani, who had held these assets for nine years through one of his companies, was now seeking to remove them from the reach of the Bank as a potential creditor in due course. Mr. Ambani says it was nothing of the kind: first of all, they were not his personal assets; and secondly, they were used to pay off some overdue loans which are referred to in a statement from his accountant in a summary but without any accompanying documents. I appreciate that there is, of course, here an important distinction between who owns the assets, but whether that was a distinction which was something which Mr. Ambani was going to be relying upon or not is another matter. This is hardly determinative, but the timing certainly raises a question in my view.

85. Another matter - again, it is not determinative but I mention it - is that there are questions about the extent to which Mr. Ambani has any offshore interests, because if so they have not been declared. There is a reference to the fact that there has been some Indian authorities' investigations into the use of offshore structures by both him and Mukesh in the past, also a tax investigation into Mukesh and his family and there is a suggestion from the press that Mr. Ambani has been interested in it too. Two particular companies were pointed out: one was a BVI company with a listing back in 2001 and one was a Bermuda company. Mr. Ambani has an answer to the Bermuda company. He says, actually, it is one of the "Flag" companies, which is an Indian company, although it is called Flag Bermuda. So that is a bad point. I agree that this appears to be an answer to that point.

86. As to as his interest in the BVI company he says that all goes back to 2001. That does not necessarily answer the point, but then he simply says, "The press are incorrect". He may mean that he never had such an interest in the company and was nothing to do with him, but he does not say so explicitly.

87. It has also been said by Mr. Balmain, at paragraph 45, that there are some other RBE subsidiaries which are not mentioned in the organogram. Again, Mr. Ambani's riposte is to say that all of this is taken into account in the value of the holding companies. I see that, but it is still not clear to me why the organogram only lists some subsidiaries and not others. It is not clear to me whether the subsidiaries pointed out here would be covered by the word "etc" shown in the organogram or not.

Conclusions on Mr Ambani's Assets

88. Taking stock there, if one adds together all the points that I have made so far and the findings I have made, and the way in which Mr. Ambani has operated, there is a very real and sound basis for concluding, as I do, that it is not possible to take at face value all that he says about the extent or otherwise of his own assets, including in this regard those assets which he has through his beneficially owned companies. There is good reason to suppose that he is not being frank and that he is likely to have more assets at his disposal than he has let on. This is not borne of some unreasonable request for "corroboration of corroboration". It is because of the demonstrable inadequacies or unanswered questions or inconsistencies which have emerged from his now two attempts to explain his financial position. Put another way on this point, he has not discharged the burden of proof of satisfying me that he does not have assets or control of assets which could be used in connection with a payment-in.

89. Mr. Howe QC's overarching point is that while there may be criticisms levelled at Mr. Ambani's evidence, and the disclosure which goes with it, they are for today's purposes really little more than carping points or cross-examination points and they cannot dislodge the fundamental point that because of the loss of his telecoms empire he is completely broke. However, the scale of the problems with his evidence in this context which I have indicated can indeed dislodge that assumption and he has not satisfied me to the contrary.

Availability of Funds from Elsewhere

90. That really completes the first part of the inquiry that I must undertake. The second part is the availability of funds from elsewhere. I point, first of all, broadly speaking, to the way in which he has put these matters. Turning to his second witness statement, what he said originally was "I understand the Court will be concerned whether I could satisfy any conditional order from outside resources, for example friends, relatives or business. I confirm I have made enquiries, but I am unable to raise any finance from external sources", which is very general indeed.

91. Then, to take some more references which appear in his third witness statement, for example in relation to his mother, where he says that "Enquiries have been made, but no loan can be availed from Mrs. Kokila Ambani." So far as his wife is concerned, he says, first of all, she has no liability under the alleged guarantee. That is irrelevant to the present inquiry. Then he says, "Enquiries have been made but no loan can be availed from her." At paragraph 55 he says, "The fact that my sons are shareholders and directors of the company does not have any bearing on my financial means." Again, that is not the purpose of the inquiry here. As to that he says in paragraph 56, "Enquiries have been made, but no loan can be availed from them."

92. I do not accept that the style of language employed by Mr. Ambani as some sort of old-fashioned English, diminishes the inadequacy of those statements. It is not about the use of the word "avail" as such, it is about the fact that they are entirely bland and general and devoid of any detail; in circumstances where the family members have dealt with and assisted each other in the past, this is unacceptable.

93. That being said by way of introduction, let me just say something about Mr. Mukesh Ambani as a source of funds. The brothers split up in 2005 when they shared out the business empire at that stage and went their separate ways. I have already explained how it is that Mukesh came to rescue Mr. Ambani and RCom by paying out $76 million just last year. I have already referred to his wealth. I have already now referred to the way in which he said that no loan can be availed from him. However, there is no dispute about the very substantial assets which other members of the family have, apart from Mukesh, which includes his two sons and his mother as well. In that regard it is accepted that his two sons had previously lent him $43 million and $70 million at a time when his asset value was something higher, but he is now coy about the sums, simply saying that their assets do not belong to him. That is in itself not controversial, but now there is no ability to avail such loans. That is particularly surprising, in my judgment, when the sons have taken an obvious personal interest in this case as they were here in Court when I heard the summary judgment application. Mr. Ambani does not even say in terms that he has actually asked them. Nor have they filed their own evidence, which they could easily have done. I appreciate what has been said by Mr Justice Park in the *Anglo-Eastern* case, but again each case depends on its facts. This is a very well resourced defence and it would have been extremely easy for any member of the family to have put in their own evidence on the point. It is not suggested that the sons themselves are not wealthy. We have already seen that they were able to extend loans of over $100 million to him previously. I do not accept, as Mr. Howe QC has submitted, that it is somehow delicate or inappropriate to require proper and detailed evidence about discussions with the relatives, not least where they are all involved one way or another in running and having run what was at one stage an extremely large business empire. It is not suggested that any of them are debilitated in any way or anything of that kind. Such detailed evidence is really the only way that in this case the Court can get a true picture of what is going on against a background of previous assistance.

94. In relation to Mukesh, the one thing he does not say, because Mr. Ambani could not obviously say it, is that Mr. Mukesh could not afford to lend him the money. That would be absurd, given the size of Mr. Mukesh's own personal fortune.

95. I then want to say something more about his mother. There is a personal loan from her as well, about 500,000 crore or some $70 million. Again, he does not say that she could not or would not lend to him now.

96. As far as that is concerned, the Defendant's skeleton argument at paragraph 26 said that:

> "Mr. Ambani's confirmation that he is unable to raise funds from any external sources is unsurprising given the plummeting value of his assets since 2012. The personal loans ... were taken out", which would include his mother, "many years ago when the value of the listed company shares ... was much higher. Given the decline in Ambani's fortunes it is unsurprising that the loans are no longer available."

97. Again, there is no evidence to that effect, and so that is speculation; moreover in this particular case I accept, as Mr. Thanki QC has said, that it is just wrong because it is clear from the underlying documents that the loan was made in 2018, so any explanation about the loans being made only in the good times, even if it was backed by evidence (which it is not), is wrong.

98. It is not clear what those previous loans were for, and whether business or personal. Again it is not suggested that his mother does not have assets, and she obviously has, otherwise she would not have been able to make the loan that she did. They are set out in detail at paragraphs 62, 63 and 64 of Mr. Balmain's witness statement, which is not challenged.

99. So far as his wife Tina Ambani is concerned, paragraph 66 of Mr. Balmain's fourth witness statement says that she holds 99% of the shares in Reliance Infrastructure Management, which is currently listed as active. If I have it right, I think that is the company that he said he got fees from. It is said that he and his nominees did have control over the company, but ownership was transferred to her in 2017. Mr. Balmain thought that the records show that this company had $571 million, but then I think something has gone wrong with the decimal points and the commas and I am prepared to accept at least for today's purposes that the correct figure is $5.7 million. That is still something, and it is not clear what is being done with it at the moment. Mr. Ambani, in this context, made the point that his wife does not have any liability to the Claimant. That is perfectly true, but it is irrelevant for the purpose of the present inquiry.

100. In conclusion, what I am dealing with here is an extraordinarily wealthy family who have helped each other in the past. I do not accept that the true position now is that all the other members of the family have firmly and irrevocably pulled the shutters down so that no funding would be available from them in the event that monies had to be paid into Court. Indeed, this case is unusual in the sense that one actually has positive evidence of family members assisting Mr. Ambani in the sort of figures that are relevant here, on previous occasions.

101. I do not believe for one moment that if push came to shove, and Mr. Ambani was actually required to pay a substantial sum into Court, that they could not, or would not, contribute very significantly. Nor do I consider that the doubts I have expressed about Mr Ambani's defence are relevant here – see paragraph 35 above.

102. This conclusion, allied with my previous conclusion, that I just do not accept that his own available assets are as limited or as negative as he says, entails the conclusion that there must be a payment into Court of a significant sum, to which I shall refer again in a moment.

R Com and Present Insolvency Proceedings

103. I should say a word, however, about the insolvency proceedings in relation to RCom, which are broadly the same as administration. Mr. Kumar's evidence was to the effect that it is possible that there may be recoveries available in the fullness of time from that company. That may or may not be the case, but whether there are, in the future, any recoveries to be made is irrelevant as far as Mr. Ambani's underlying guarantee liability is concerned. No recoveries have been made save for a $200 million payment (itself under challenge as a preference) which has already been taken into account. However, the possibility that there may be a recovery from the principal debtor is entirely irrelevant, in my judgment, to the questions of the conditional payment which I have to decide.

Overall Conclusion

104. The overall conclusion there is that Mr. Ambani has not satisfied me that he cannot make any payment-in at all, which is his case, so that if an order was made his defence would be stifled. So the question then is, how much? Because of the inadequacies of the evidence put forward, and the unanswered questions and the inaccuracies and at least one clear falsehood in relation to the guarantees which I have recorded, it is difficult to say what the correct figure would be, but if that difficulty is created by a lack of candour or transparency on the part of the Defendant, that is hardly a bar to making an order.

105. On the other hand, this does not necessarily mean that what must follow is that there should be a payment-in of all the money into Court. I would not order that because, with the best will, or the most jaundiced eye in the world, I do not think I can assume that $700 million can be found in any sensible timescale, even though the lack of transparency is down to Mr. Ambani.

106. However, bearing in mind he clearly has more assets and/or income than he is letting on, that the family members, who have all helped out before, can, and, in my view, will, if required, assist, and bearing in mind the scale of the sort of assets that the family members have, and what they are able to afford by way of lifestyle, I am going to order a figure of $100 million to be paid into Court.

107. I consider that this is a proportionate and effective sum to be paid in. It will give at least some security to the Bank and it will act as an earnest of intent on the part of Mr Ambani in relation to the pursuit of his defence. The fact that there may be less delay in getting to trial now than previously as a result of more active case management is not material here, in my view.

108. Mr. Howe QC at one point said that unless effectively I was persuaded to order all of it into Court or most of it, then as a matter of discretion I should not order anything, because it is hardly worth bothering about. I am afraid I do not accept that submission. Something is better than nothing, and the "something" here is still a very substantial sum.

109. That is my decision. I am most grateful to Counsel for their helpful and comprehensive submissions.

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