"REPORTABLE"

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 57 OF 2014

Subrata Roy Sahara …. Petitioner

versus

Union of India and others …. Respondents

J U D G M E N T

Jagdish Singh Khehar, J.

I. Should we be hearing this case?
Would it not be better, for another Bench to hear this case?

1. In the present writ petition, the petitioner has made the following prayers:-

> "(a) Declare the order dated 4.3.2014 as void, nullity and non-est in the eyes of law;
> (b) Declare that the incarceration and the custody of the petitioner are illegal which should be terminated forthwith;
> (c) Issue such other writ in the nature of Habeas (corpus) or other writs, order or direction for release of the petitioner from the illegal custody.
> (d) Pass such further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

A perusal of the prayers made in the writ petition reveals, that in sum and substance the petitioner has assailed the order dated 4.3.2014 passed by us in Contempt Petition (Civil) nos. 412 and 413 of 2012 and Contempt Petition (Civil) no. 260 of 2013. To understand the exact purport of the prayers made in the writ petition, it is essential to extract herein the order

dated 4.3.2014, which is subject matter of challenge through the present criminal writ petition:-

> "1. Contemnors are personally present in the Court, including the fifth respondent, who has been brought to the Court by the U.P. Police, in due execution of our non-bailable warrant of arrest.
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> 2. We have heard the Senior Counsel on various occasions and perused the various documents, affidavits, etc. We have heard the learned counsel and contemnors today as well. We are fully convinced that the contemnors have not complied with our directions contained in the judgment dated August 31, 2012, as well as orders dated December 5, 2012 and February 25, 2013 passed in Civil Appeal no. 8643 of 2012 and I.A. no. 67 of 2013 by a three Judge Bench of this Court.
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> 3. Sufficient opportunities have been given to the contemnors to fully comply with those orders and purge the contempt committed by them but, rather than availing of the same, they have adopted various dilatory tactics to delay the implementation of the orders of this Court. Non-compliance of the orders passed by this Court shakes the very foundation of our judicial system and undermines the rule of law, which we are bound to honour and protect. This is essential to maintain faith and confidence of the people of this country in the judiciary.
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> 4. We have found that the contemnors have maintained an unreasonable stand throughout the proceedings before SEBI, SAT, High Court and even before this Court. Reports/analysis filed by SEBI on 18.2.2014 make detailed reference to the submissions, documents, etc. furnished by the contemnors, which indicates that they are filing and making unacceptable statements and affidavits all through and even in the contempt proceedings. Documents and affidavits produced by the contemnors themselves would apparently falsify their refund theory and cast serious doubts about the existence of the so-called investors. All the fact finding authorities have opined that majority of investors do not exist. Preservation of market integrity is extremely important for economic growth of this country and for national interest. Maintaining investors' confidence requires market integrity and control of market abuse. Market abuse is a serious financial crime which undermines the very financial structure of this country and will make imbalance in wealth between haves and have nots.

5. We notice, on this day also, no proposal is forthcoming to honour the judgment of this Court dated 31st August, 2012 and the orders passed by this Court on December 05, 2012 and February 25, 2013 by the three Judge Bench. In such circumstances, in exercise of the powers conferred under Articles 129 and 142 of the Constitution of India, we order detention of all the contemnors, except Mrs. Vandana Bhargava (the fourth respondent) and send them to judicial custody at Delhi, till the next date of hearing. This concession is being extended towards the fourth respondent because she is a woman Director, and also, to enable the contemnors to be in a position to propose an acceptable solution for execution of our orders, by coordinating with the detenues. Mrs. Vandana Bhargava, who herself is one of the Directors, is permitted to be in touch with the rest of the contemnors and submit an acceptable proposal arrived at during their detention, so that the Court can pass appropriate orders.

6. List on March 11, 2014 at 2.00 p.m. All the contemnors be produced in Court on that date. Mrs. Vandana Bhargava, the fourth respondent, to appear on her own. However, liberty is granted for mentioning the matters for preponement of the date, if a concrete and acceptable proposal can be offered in the meantime."

2. When this matter came up for hearing for the first time on 12.3.2014, Mr. Ram Jethmalani, learned Senior Counsel appearing for the petitioner, sought liberty to make a frank and candid submission. He told us, that it would be embarrassing for him, to canvass the submissions which he is bound to raise in the matter before us, i.e., before the Bench as it was presently structured. It was also his submission, that hearing this matter would also discomfort and embarrass us as well. He therefore suggested, that we should recuse ourselves from hearing the case, and require it to be heard by another composition, not including either of us.

3. Mr. Arvind Datar, learned Senior Counsel, appearing for the respondents, vociferously implored us not to withdraw ourselves from

hearing the case. It was his vigorous and emphatic contention, that the present petition was not maintainable, either under the provisions of the Constitution of India, or under any other law of the land. Inviting the Court's attention to the heading of the petition, it was submitted, that it did not disclose any legal provision, whereunder the present writ petition had been filed. He submitted, that as per its own showing (ascertainable from the title of the petition), the present writ petition had been filed, under the power recognized and exercised by this Court, in A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602. It was the assertion of learned counsel, that the above judgment, has now been clarified by this Court. According to learned counsel, it has now been settled, that the above judgment did not fashion or create any such power or jurisdiction, as is sought to be invoked by the petitioner.

4. Besides the above purely legal submission, learned Senior Counsel for the respondents equally candidly submitted, that the filing of this petition was a carefully engineered device, adopted by the petitioner as a stratagem, to seek our withdrawal from the matter. In order to emphasise that this Bench was being arm twisted, learned counsel invited our attention to the foot of the last page of the petition, i.e., to the authorship of the petition, just under the prayer clause. The text, to which our attention was drawn, is set out below:-

> "Signed and approved by:-
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> Mr. Ram Jethmalani, Sr. Adv.
> Dr. Rajeev Dhawan, Sr. Adv.
> Mr. Rakesh Dwivedi, Sr. Adv.

Mr. S. Ganesh, Sr. Adv.
Mr. Ravi Shankar Prasad, Sr. Adv."

According to learned counsel, this is the first petition he has seen in his entire professional career, which is settled by five Senior Counsel, all of them of recognized eminence.

5. It would be relevant to mention, that when the matter was taken up for hearing by us, for the first time on 12.3.2014 at 2.00 PM, it had been so listed on the directions of Hon'ble the Chief Justice in furtherance of a "mentioning for listing", on the morning of the same day, i.e., 12.3.2014. We had therefore, no occasion to go through the pleadings of the present writ petition. After having heard submissions of rival counsel noticed above, we decided not to proceed with the matter, before going through the pleadings of the case. We therefore directed the posting of the case for hearing on the following day, i.e., 13.3.2014.

6. By the next date, we had an opportunity to determine, how exactly the matter was listed before us, as also, to ascertain whether the pleadings of the present criminal writ petition incorporated material which would embarrass us, as suggested by the learned counsel for the petitioner. So far as the filing and listing of the present petition is concerned, it was filed by the petitioner in the Registry of this Court on 11.3.2014. Thereafter, learned counsel for the petitioner, appeared before the Bench presided over by Hon'ble the Chief Justice, on the morning of 12.3.2014 to "mention for listing", for the same day. The Court Master of the Bench presided over by Hon'ble the Chief Justice, recorded the following note:-

> "As directed list today i.e., 12.3.2014, if in order, in the mentioning list at 2.00 PM, before appropriate Bench."

For the concerned Bench before which the matter was to be posted, the noting file of the branch, reads as under:-

> "Apprised.
>
> May be listed before the Special Bench comprising Hon'ble Mr. Justice K.S. Radhakrishnan and Hon'ble Mr. Justice J.S. Khehar."

The above note was recorded on the directions of Hon'ble the Chief Justice. A perusal of the above sequence of events reveals, that even though our combination as a Bench did not exist for 12.3.2014, yet a Special Bench was constituted for listing the present writ petition, in its present arrangement. It is therefore reasonable to infer, that the present constitution of the Bench, was a conscious determination of Hon'ble the Chief Justice.

7. Now the embarrassment part. Having gone through the pleadings of the writ petition we were satisfied, that nothing expressed therein could be assumed, as would humiliate or discomfort us by putting us to shame. To modify an earlier order passed by us, for a mistake we may have committed, which is apparent on the face of the record, is a jurisdiction we regularly exercise under Article 137 of the Constitution of India. Added to that, it is open to a party to file a curative petition as held by this Court in Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388. These jurisdictions are regularly exercised by us, when made out, without any embarrassment. Correction of a wrong order, would never put anyone to

shame. Recognition of a mistake, and its rectification, would certainly not put us to shame. In our considered view, embarrassment would arise when the order assailed is actuated by personal and/or extraneous considerations, and the pleadings record such an accusation. No such allegation was made in the present writ petition. And therefore, we were fully satisfied that the feeling entertained by the petitioner, that we would not pass an appropriate order, if the order impugned dated 4.3.2014 was found to be partly or fully unjustified, was totally misplaced.

8. It is therefore, that we informed learned Senior counsel, that we would hear the matter. It seems that our determination to hear the matter marked to us by Hon'ble the Chief Justice, was not palatable to some of the learned counsel for the petitioner. For, Mr. Ram Jethmalani, learned Senior Counsel, was now more forthright. He told us, that we should not hear the matter, because "his client" had apprehensions of prejudice. He would, however, not spell out the basis for such apprehension. Dr. Rajeev Dhawan, came out all guns blazing, in support of his colleague, by posing a query: Has the Court made a mistake, serious enough, giving rise to a presumption of bias "… even if it is not there …"? It was difficult to understand what he meant. But seriously, in the manner Dr. Rajeev Dhawan had addressed the Court, it sounded like an insinuation. Mr. Ram Jethmalani joined in to inform us, that the Bar (those sitting on the side he represented) was shell-shocked, that an order violating the petitioner's rights under Article 21 of the Constitution of India, had been passed, and it

did not seem to cause any concern to us. The petitioner had been taken into judicial custody, we were told, without affording him any opportunity of hearing. Learned counsel asked the Bench, to accept its mistake in ordering the arrest and detention of the petitioner, and acknowledge the "human error" committed by the Court, while passing the impugned order dated 4.3.2014. Dr. Rajeev Dhawan, then informed the Court, that "… moments come in the profession, though rarely, when we tell the Judges of the Supreme Court, that you have committed a terrible terrible mistake, by passing an order which has violated the civil liberties of our client. … that the order passed is void …". And moments later, referring to the order, he said, "… it is a draconian order …" The seriousness of the submissions apart, none of them, even remotely, demonstrated "bias".

9. But Mr. C.A. Sundaram, another Senior Counsel representing the petitioner, distanced himself from the above submissions. He informed the Court, "… I am not invoking the doctrine of bias, as has been alleged …" We are of the view, that a genuine plea of bias alone, could have caused us to withdraw from the matter, and require it to be heard by some other Bench. Detailed submissions on the allegations constituting bias, were addressed well after proceedings had gone on for a few weeks, the same have been dealt with separately (under heading VIII, "Whether the impugned order dated 4.3.2014, is vitiated on account of bias?"). Based on the submissions advanced by learned counsel, we could not persuade ourselves in accepting the prayer for recusal.

10. We have recorded the above narration, lest we are accused of not correctly depicting the submissions, as they were canvassed before us. In our understanding, the oath of our office, required us to go ahead with the hearing. And not to be overawed by such submissions. In our view, not hearing the matter, would constitute an act in breach of our oath of office, which mandates us to perform the duties of our office, to the best of our ability, without fear or favour, affection or ill will. This is certainly not the first time, when solicitation for solicitation for recusal has been sought by learned counsel. Such a recorded peremptory prayer, was made by Mr. R.K. Anand, an eminent Senior Advocate, before the High Court of Delhi, seeking the recusal of Mr. Justice Manmohan Sarin from hearing his personal case. Mr. Justice Manmohan Sarin while declining the request made by Mr. R.K. Anand, observed as under:

> "The path of recusal is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favour, affection or ill will while upholding the constitution and the laws. In a case, where unfounded and motivated allegations of bias are sought to be made with a view of forum hunting / Bench preference or brow-beating the Court, then, succumbing to such a pressure would tantamount to not fulfilling the oath of office."

The above determination of the High Court of Delhi was assailed before this Court in R.K. Anand v. Delhi High Court, (2009) 8 SCC 106. The determination of the High Court whereby Mr. Justice Manmohan Sarin declined to withdraw from the hearing of the case came to be upheld, with the following observations:

> "The above passage, in our view, correctly sums up what should be the Court's response in the face of a request for recusal made with the intent to intimidate the court or to get better of an `inconvenient' judge or to obfuscate the issues or to cause obstruction and delay the proceedings or in any other way frustrate or obstruct the course of justice."
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> (emphasis is ours)

11. In fact, the observations of the High Court of Delhi and those of this Court reflected, exactly how it felt, when learned counsel addressed the Court, at the commencement of the hearing. If it was learned counsel's posturing antics, aimed at bench-hunting or bench-hopping (or should we say, bench-avoiding), we would not allow that. Affronts, jibes and carefully and consciously planned snubs could not deter us, from discharging our onerous responsibility. We could at any time, during the course of hearing, walk out and make way, for another Bench to decide the matter, if ever we felt that, that would be the righteous course to follow. Whether or not, it would be better for another Bench to hear this case, will emerge from the conclusions, we will draw, in the course of the present determination.

12. What is it that this Court had done through its order dated 31.8.2012 while upholding the earlier orders passed by the SEBI (FTM) (dated 23.6.2011) and the SAT (dated 18.10.2011)? We had merely confirmed the directions earlier issued to the two companies, to refund the moneys collected by them from investors, who had subscribed to their OFCD's, by the SEBI (FTM) and by the SAT. The directions did not extend to funds contributed by the promoters, the directors or the other stakeholders. The refund did not include any business gains earned by the two companies

during the subsistence of their enterprise. According to the stance adopted by the two companies before this Court, all the investors' money collected through OFCD's, had mainly been invested with the other companies of the Sahara Group. This position was expressly reiterated, in the two separate affidavits filed by Sahara India Real Estate Corporation Limited (hereinafter referred to as 'SIRECL') and Sahara Housing Investment Corporation Limited (hereinafter referred to as 'SHICL') dated 4.1.2012, before this Court. It is now their case, that these properties were sold to other Sahara Group companies to redeem the OFCD's. It is therefore all within the companies of the Sahara Group. That is how, sale transactions by way of cash have been explained. It is therefore apparent, that we had not directed a refund of any other amount, besides that which was collected from the investors themselves. The petitioner herein – Mr. Subrata Roy Sahara, during the course of his personal oral hearing informed us, that most of the investments were made by petty peasants, labourers, cobblers, blacksmiths, woodcutters and other such like artisans, ranging mostly between Rs.2,000/- and Rs.3,000/-. Almost all the investors, according to the petitioner, did not even have a bank account. That was why, they had chosen to invest the same through OFCD's, in the two companies. If the above position was/is correct, and the refund related only to deposits made by these petty poor citizens of this country, why are the two companies or the petitioner – Mr. Subrata Roy Sahara, in his capacity as promoter, and the other concerned directors, so agitated with our order. The findings against the two companies have been concurrent.

At all levels, where issues raised by the two companies were considered and agitated, the determination has been in one voice, that the action of the two companies was unlawful and accordingly the moneys collected had to be refunded. There is not even a single order at any level, in favour of the two companies. The two companies were required to refund the money to its investors, because of the absolute illegality in its collection.

13. Because both the SEBI and the SAT were doubtful about the veracity of the receipt of the funds as alleged, they had directed the refund to the investors by way of cash "through" demand draft or pay order. During the course of final hearing of the appellate proceedings before this Court, submissions were heard over a period of three weeks during the summer vacation. We entertained a similar impression and suspicion. Firstly because, the two companies never made available any information sought from them. They always stonewalled all attempts to gather information by the SEBI, even by exerting influence from the Ministry of Corporate Affairs, and by raising purely technical pleas. And also because, the little bits of information made available by the companies for evaluation, were found to be seriously doubtful. It is also important for us to record, that the pointed position adopted by the SEBI before this Court, during the disposal of Civil Appeal nos. 9813 and 9833 of 2011 was, that neither SIRECL, nor SHICL, ever provided details of its investors to the SEBI (FTM). They contested the proceedings initiated by the SEBI (FTM), only on technical grounds. We were told that even before the SAT, no

details were furnished. The position remained the same, even before this Court. Based on the non disclosure of information sought from the two companies, it was not possible to record a firm finding, either ways. It is, therefore, that a different procedure was adopted by this Court while disposing the appeals preferred by the two companies, vide order dated 31.8.2012. The companies were restrained from making direct refunds. They were directed to deposit all investor related funds (along with interest) with the SEBI. The SEBI was in turn directed, to make the refunds to the investors. In case the investors could not be identified, or were found to be non-existent or bogus, the remaining funds along with interest, were directed to be deposited with the Government of India. This seems to us, to be the reason, for all these twists and turns, in the aftermath of this Court's order dated 31.8.2012. If the two companies were ready and willing to pay the money, as has been made out, on behalf of the two companies, there would be no cause for agitation.

14. One of the reasons for retaining the instant petition for hearing with ourselves was, that we had heard eminent Senior Counsel engaged by the two companies exclusively for over three weeks during the summer vacation of 2012. We had been taken through thousands of pages of pleadings. We had the occasion to watch the demeanour and defences adopted by the two companies and the contemnors from time to time, from close quarters. Writing the judgment, had occupied the entire remaining period of the summer vacation of 2012, as also, about two months of

further time. The judgment dated 31.8.2012 runs into 269 printed pages. Both of us had rendered separate judgments, concurring with one another, on each aspect of the matter. During the course of writing the judgment, we had the occasion to minutely examine numerous communications, exchanged between the rival parties. That too had resulted in a different kind of understanding, about the controversy. For any other Bench to understand the nuances of the controversy determined through our order dated 31.8.2012, would require prolonged hearing of the matter. Months of time, just in the same manner as we had taken while passing the order dated 31.8.2012, would have to be spent again. Possibly the submissions made by the learned counsel seeking our recusal, was consciously aimed at the above objective. Was this the reason for the theatrics, of some of the learned Senior Counsel? Difficult to say for sure. But deep within, don't we all understand? It was also for the sake of saving precious time of this Court, that we decided to bear the brunt and the rhetoric, of some of the learned Senior Counsel representing the petitioner. We are therefore satisfied, that it would not be better, for another Bench to hear this case.

II. Must judicial orders be obeyed at all costs?

Can a judicial order be disregarded, if the person concerned feels, that the order is wholly illegal and void?

15. By the time a Judge is called upon to serve on the Bench of the Supreme Court of India, he understands his responsibilities and duties…..and also his powers and authority. A Judge has the solemn duty of deciding conflicting issues between rival parties. Rival parties inevitably

claim diagonally opposite rights. The decision has however to be rendered in favour of one party (and against the other). That, however, is not a cause for much worry, because a Judge is to decide every dispute, in consonance with law. If one is not free to decide in consonance with his will, but must decide in consonance with law, the concept of a Judge being an individual possessing power and authority, is but a delusion. The saving grace is, that only a few understand this reality. But what a Judge is taught during his arduous and onerous journey to the Supreme Court is, that his calling is based on, the faith and confidence reposed in him to serve his country, its institutions and citizens. Each one of the above (the country, its institutions and citizens), needs to be preserved. Each of them grows to prosper, with the others' support. Each of them has duties, obligations and responsibilities…..and also rights, benefits and advantages. Their harmonious glory, emerges from, what is commonly understood as, "the rule of law." The judiciary as an institution, has extremely sacrosanct duties, obligations and responsibilities. We shall, in the succeeding paragraphs, attempt to express these, in a formal perspective.

16. The President of India is vested with executive power of the Union. All executive actions of the Government of India, are expressed to be taken in his name. The responsibility, and the power, which is vested in the President of India, is to be discharged/ exercised, in accordance with the provisions of the Constitution of India. For that, the President of India

may even consult the Supreme Court, on a question of law or fact of public importance. And when so consulted, the Supreme Court is obliged to tender its opinion to the President. Furthermore, the Constitution of India contemplates, that law declared by the Supreme Court, is binding on all courts within the territory of India. It also mandates, that an order made by the Supreme Court, is enforceable throughout the territory of India. But what is the scope of the law declared by the Supreme Court? And what are the kinds of orders it passes? The Supreme Court has been vested with the power to decide substantial questions of law, as also, to interpret the provisions of the Constitution of India. The Supreme Court exercises jurisdiction to determine, whether or not, laws made by Parliament or by a State Legislature, are consistent with the provisions of the Constitution of India. And in case any legislation is found to be enacted, in violation of the provisions of the Constitution of India, this Court is constrained to strike it down. The resultant effect is, that a law enacted by the Parliament or by a State Legislature, is declared illegal or void. After a Court's verdict has attained finality, not once, never and never, has any legislative body ever disobeyed or disrespected an order passed by a court, declaring a legislation, illegal or void. The Supreme Court also exercises original jurisdiction, to settle disputes between the Government of India and one or more States; or between the Government of India and any one State or more States on the one side, and one or more other States on the other; or between two or more States. In such disputes, the order could be in favour of (or against), the Government of India, and/or one or the other

State Government(s) concerned. Yet, the orders passed by the Supreme Court on the above disputes, have unfailingly been accepted and complied with, despite the seriousness of the consequences, emerging from such orders. The settlement of such disputes by the Supreme Court, has not ever earned scorn, disdain, disrespect or denigration of the parties concerned. The Supreme Court also enforces through its writ jurisdiction, fundamental rights of the citizens of this country. In case an individual's fundamental rights (or other legal rights), are found to have been violated, the Government of India, or the concerned State Government, or the instrumentality/institution concerned, is directed to restore to the individual, what is due to him. The Government (or the instrumentality/institution) concerned, which is directed to extend benefits denied to an individual(s), has always honourably obeyed and implemented Court orders, gracefully. There are numerous institutions created to assist the executive government, in matters of governance. Some of them are constitutional authorities, others are creatures, either of a legislation or of the executive. The object of executive governance, is to enforce duties, obligations and responsibilities, and also, to extend rights, benefits and advantages. Courts also exercise, the power of judicial review, over actions of such instrumentalities/institutions. While exercising the power of judicial review, Courts also pass orders and directions, to enforce legal rights. Courts are rarely confronted with a situation where an executive department of a government, or an instrumentality/institution, has denied compliance. Likewise, the Supreme Court is also vested with the responsibility to

adjudicate private disputes between individuals (both civil and criminal), so as to render a determination of their individual rights. These too, are as a rule (almost) always complied with voluntarily and gracefully.

17. There is no escape from, acceptance, or obedience, or compliance of an order passed by the Supreme Court, which is the final and the highest Court, in the country. Where would we find ourselves, if the Parliament or a State Legislature insists, that a statutory provision struck down as unconstitutional, is valid? Or, if a decision rendered by the Supreme Court, in exercise of its original jurisdiction, is not accepted for compliance, by either the Government of India, and/or one or the other State Government(s) concerned? What if, the concerned government or instrumentality, chooses not to give effect to a Court order, declaring the fundamental right of a citizen? Or, a determination rendered by a Court to give effect to a legal right, is not acceptable for compliance? Where would we be, if decisions on private disputes rendered between private individuals, are not complied with? The answer though preposterous, is not far fetched. In view of the functional position of the Supreme Court depicted above, non-compliance of its orders, would dislodge the cornerstone maintaining the equilibrium and equanimity in the country's governance. There would be a breakdown of constitutional functioning. It would be a mayhem of sorts.

18. Before we advert to the question, whether this Court can order obedience of an order passed by it, it may be relevant to understand, the

extent and width of jurisdiction, within the framework whereof this Court can pass orders. In this behalf reference may be made to the nine-Judge Constitution Bench judgment of this Court, in Naresh Sridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1, wherein it was held as under:-

> "60. There is yet another aspect of this matter to which it is necessary to refer. The High Court is a superior Court of Record and under Article 215, shall have all powers of such a Court of Record including the power to punish contempt of itself. One distinguishing characteristic of such superior Courts is that they are entitled to consider questions of their jurisdiction raised before them. This question fell to be considered by this Court in Special Reference No. 1 of 1964, (1965) 1 S.C.R. 413 at p. 499. In that case, it was urged before this Court that in granting bail to Keshav Singh, the High Court had exceeded its jurisdiction and as such, the order was a nullity. Rejecting this argument, this Court observed that in the case of a superior Court of Record, it is for the Court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction. That is why this Court did not accede to the proposition that in passing the order for interim bail, the High Court can be said to have exceeded its jurisdiction with the result that the order in question was null and void. In support of this view, this Court cited a passage from Halsbury's Laws of England where it is observed that:-
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> > "prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular Court." (Halsbury's Laws of England, Vol. 9, p. 349).".
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> If the decision of a superior Court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law; but until the adjudication by a superior Court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by the exercise of the writ jurisdiction of this Court."
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> (emphasis is ours)

Just like High Courts, the Supreme Court is a superior Court of Record. This mandate is expressly contained in Article 129 of the Constitution of

India. Since it is not the case of the petitioner before this Court, that there is some legislative or constitutional provision, curtailing the jurisdiction of this Court, to pass an order of the nature which is impugned through the instant writ petition, it stands acknowledged, that the above order has been passed by this Court, in legitimate exercise of its jurisdiction.

19. On the subject of obedience of orders passed by this Court, this Court recently in K.A. Ansari v. Indian Airlines Ltd., (2009) 2 SCC 164, observed thus: "The respondent Indian Airlines was obliged to obey and implement the … direction. If they had any doubt or if the order was not clear, it was always open to them to approach the court for clarification of the … order. Without challenging the … direction or seeking clarification, Indian Airlines could not circumvent the same, on any ground whatsoever. Difficulty in implementation of an order passed by the Court, howsoever grave its effect may be, is no answer for its non-compliance." It is therefore that Article 142 of the Constitution of India mandates that this Court "…in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India…" And it is also *inter alia* for the above enforcement, that Article 129 of the Constitution of India, vests in the Supreme Court the power, amongst other things, to enforce compliance of Court directions. The Supreme Court has the jurisdiction and power, to punish for its contempt. It is this dispensation, which

authorizes the Supreme Court to enforce compliance of its orders. For, the power to punish, would serve no purpose, if the power to enforce compliance was lacking. It was, therefore, that this Court in Maninderjit Singh Bitta v. Union of India, (2012) 1 SCC 273, with reference to its contempt jurisdiction observed, thus:-

> "26. It is also of some relevance to note that disobedience of court orders by positive or active contribution or non-obedience by a passive and dormant conduct leads to the same result. Disobedience of orders of the court strikes at the very root of rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the Judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs (refer T.N. Godavarman Thirumulpad vs. Ashok Khot, (2006) 5 SCC 1). The proceedings before the highest court of the land in a public interest litigation, attain even more significance. These are the cases which come up for hearing before the court on a grievance raised by the public at large or public spirited persons. The State itself places matters before the Court for determination which would fall, statutorily or otherwise, in the domain of the executive authority.
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> 27. It is where the State and its instrumentalities have failed to discharge its statutory functions or have acted adversely to the larger public interest that the courts are called upon to interfere in exercise of their extraordinary jurisdiction to ensure maintenance of the rule of law. These are the cases which have impact in rem or on larger section of the society and not in personam simpliciter. Courts are called upon to exercise jurisdiction with twin objects in mind. Firstly, to punish the persons who have disobeyed or not carried out orders of the court i.e. for their past conduct. Secondly, to pass such orders, including imprisonment and use the contempt jurisdiction as a tool for compliance of its orders in future. This principle has been applied in the United States and Australia as well.
>
> 34. Having found them guilty under the provisions of the 1971 Act and under Article 129 of the Constitution of India, we punish the Secretary, Transport and Commissioner, State Road Transport Authority of the State of Haryana as under:

> (i) They are punished to pay a fine of Rs.2,000/- each and in default, they shall be liable to undergo simple imprisonment for a period of fifteen days.
>
> (ii) We impose exemplary cost of Rs.50,000/- on the State of Haryana, which amount, at the first instance, shall be paid by the State but would be recovered from the salaries of the erring officers/officials of the State in accordance with law and such recovery proceedings be concluded within six months. The costs would be payable to the Supreme Court Legal Services Committee.
>
> (iii) In view of the principle that the courts also invoke contempt jurisdiction as a tool for compliance of its orders in future, we hereby direct the State Government and the Respondent/contemnor herein now to positively comply with the orders and implement the scheme within eight weeks from today."
>
> (emphasis is ours)

In this context, the following observations made by this Court, in Supreme Court Bar Association v. Union of India, (1998) 4 SCC 409, illustrate the point sought to be made:

> "42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution, whenever an act adversely effects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely effects the Majesty of Law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperiled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemner and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice."
>
> (emphasis is ours)

We are satisfied to hold, that the provisions referred to by us in the order dated 4.3.2014 (Articles 129 and 142 of the Constitution of India) vest in the Supreme Court, the power to persuade, and if necessary, compel obedience and observance, of judicial orders. It is not possible, to view this matter in any other perspective, in the background of the conclusion recorded by us hereinabove, namely, non-compliance of the orders of the Supreme Court, would dislodge the cornerstone maintaining the equilibrium and equanimity, in the governance of this country. This has been the manner of understanding, of the power of this Court. In case there has been any ambiguity, let it now be understood, that this Court has the unlimited power (in fact, the sacred obligation), to compel obedience and observance of its orders.

III. Facts reflecting the demeanour of the two companies, the petitioner, and other directors of SIRECL and SHICL, in the process of litigation, leading upto the passing of the order dated 31.8.2012.

20. During our entire careers as Advocates practicing before the High Court and before this Court, and as Judges of different High Courts, as Chief Justices of High Courts in different States, and also, as Judges of this Court, we have yet to experience a demeanour of defiance, similar to the one adopted by SIRECL or SHICL or their promoter and directors. The responsibility of the above defiance, which constituted a rebellious behaviour, challenging the authority of the SEBI, from investigating into the affairs of the two companies, required brazenness, flowing from unfathomable power and authority. It is therefore essential to recapitulate,

the demeanour adopted by the two companies, before the SEBI (FTM), which position remained unaltered, before the SAT. These need to be highlighted, to fully understand how a litigant can behave, to defeat the cause of justice. The responsibility for the above demeanour, would essentially fall, on the shoulders of the promoter, and the directors, of the two companies. As a matter of fact, Mr. Subrata Roy Sahara (the petitioner before this Court), Ms. Vandana Bhargava (the director exempted from arrest, in the impugned order dated 4.3.2014), Mr. Ravi Shankar Dubey and Mr. Ashok Roy Choudhary (the directors, whose arrest and detention was ordered by this Court, along with that of the petitioner, on 4.3.2014) were expressly named by the SEBI, and prohibitory orders were passed by the SEBI (FTM), against the afore-stated promoter and directors, expressly restraining them from carrying out various activities connected with the two companies. It is also essential, to refer to the disposition of the two companies (under reference), in the proceedings initiated by them, before the High Court of Judicature at Allahabad, Lucknow Bench (hereinafter referred to as, 'the High Court'). The above referred disposition, led to passing of strictures, and the vacation of an interim order passed by the High Court, in their favour. That too, would show their spirit of defiance. The impressions gathered by this Court, when the two companies appeared before this Court in Civil Appeal Nos. 9813 and 9833 of 2011, are also significant. Thus, the above details are being set out briefly, herein below.

21. A complaint was addressed by "Professional Group for Investors Protection" on 25.12.2009, alleging violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, 'the SEBI Act'), against the companies under reference. On similar lines, another complaint was addressed to the SEBI by one "Roshan Lal" on 04.01.2010. In order to probe the authenticity of the allegations leveled in the complaints, the SEBI sought information from Enam Securities Private Limited - a merchant banker. In its response dated 21.2.2010, Enam Securities Private Limited asserted, that the OFCDs issued by SIRECL and SHICL, had been issued in conformity with all applicable laws. In sum and substance, the above merchant banker did not tender any reply, which could have been of help, to determine the authenticity of the allegations leveled in the complaints.

22. All the same, the SEBI again sought further details from Enam Securities Private Limited. The particulars of the information sought are being extracted herein below:

> "a. details regarding the filing of RHP of the said companies with the concerned RoC.
> b. date of opening and closing of the subscription list.
> c. details regarding the number of application forms circulated after the filing of the RHP with RoC.
> d. details regarding the number of applications received.
> e. the number of allottees
> f. list of allottees.
> g. the date of allotment.
> h. date of dispatch of debenture certificates etc.
> i. copies of application forms, RHP, pamphlets and other promotional material circulated."

Enam Securities Private Limited, however, did not furnish the information sought.

23. The SEBI then directly sought the desired information from SIRECL and SHICL, through two separate letters dated 12.05.2010. Instead of furnishing the details of the information sought, the companies under reference, required the SEBI to furnish them the complaints, which had prompted it to seek the information.

24. The SEBI again addressed separate communications to the two companies, dated 21.5.2010, seeking the same information. Both companies adopted the same posture, yet again. This time, however, SIRECL, as well as, SHICL pointed out to the SEBI, that it had no jurisdiction to inquire into the affairs of the two companies, under the provisions of the SEBI Act.

25. The SEBI repeated its request to the two companies, for the required information, through two separate communications, dated 11.06.2010. On this occasion, the two companies addressed separate letters dated 16.06.2010 to the SEBI, informing it, that they had received a communication from the office of the Union Minister of State for Corporate Affairs, to the effect, that the jurisdictional issue raised by the two companies, was under the consideration of the Ministry of Corporate Affairs. Accordingly, the two companies informed the SEBI, that they would furnish the information sought, only upon the Ministry's conclusion, that the SEBI had the jurisdiction in the matter.

26. In view of the posture adopted by the two companies, summons dated 30.8.2010 and 23.9.2010, were issued under Section 11C of the SEBI Act to them, to provide the following information:

> "1. Details regarding filing of prospectus/Red-herring Prospectus with ROC for issuance of OFCDs.
> 2. Copies of the application forms, Red-Herring Prospectus, Pamphlets, advertisements and other promotional materials circulated for issuance of OFCDs.
> 3. Details regarding number of application forms circulated, inviting subscription for OFCDs.
> 4. Details regarding number of applications and subscription amount received for OFCDs.
> 5. Date of opening and closing of the subscription list for the said OFCDs.
> 6. Number and list of allottees for the said OFCDs and the number of OFCDs allotted and value of such allotment against each allottee's name;
> 7. Date of allotment of OFCDs;
> 8. Copies of the minutes of Board/committee meeting in which the resolution has been passed for allotment;
> 9 Copy of Form 2 (along with annexures) filed with ROC, if any, regarding issuance of OFCDs or equity shares arising out of conversion of such OFCDs.
> 10. Copies of the Annual Reports filed with Registrar of Companies for the immediately preceding two financial years.
> 11. Date of dispatch of debenture certificate etc."

The aforesaid summons were responded to by the companies, through two separate communications dated 13.09.2010, wherein the companies again adopted the stance, that the SEBI had no jurisdiction in the matter, and further, that the matter of jurisdiction was being examined by the Ministry of Corporate Affairs. Based on the above response, the companies required the SEBI to withdraw the above summons (dated 30.8.2010 and 23.9.2010).

27. On 30.09.2010, through separate letters issued by SIRECL and SHICL, the companies adopted the stance, that they did not have the complete information sought by the SEBI. This was indeed a shocking disclosure, by two statutory entities, holding thousands of crores of rupees of investment funds, deposited by crores of investors. Such like absurdities, were routine defences, adopted by the two companies.

28. The Chief Financial Officer of the Sahara India Group of Companies sought an opportunity of personal hearing. The SEBI (FTM) afforded the above sought opportunity of hearing, on 03.11.2010. During the course of hearing, it was impressed upon the Chief Financial Officer, that he should furnish information solicited by the SEBI (through the aforesaid summons, dated 30.8.2010 and 23.9.2010), fully and accurately, without any delay. Despite the above, neither of the two companies, furnished the information sought.

29. On its own, the SEBI obtained a part of the information, from the MCA-21 portal maintained by the Ministry of Corporate Affairs. This information had been furnished by SIRECL, to the Registrar of Companies, Uttar Pradesh and Uttarakhand; and by SHICL, to the Registrar of Companies, Maharashtra. By an order dated 24.11.2010, the SEBI (FTM) drew the following inferences/conclusions:

> "Firstly, neither SIRECL nor SHICL had denied their having issued OFCDs. Secondly, SIRECL as also SHICL acknowledged having filed RHPs in respect of the OFCDs issued by them with the concerned Registrar of Companies. Thirdly, besides the dates of filing the RHPs with the respective Registrar of Companies, neither

of the companies had furnished any other information/document sought from the companies by SEBI. Fourthly, the companies had adopted a stance, that they did not have complete details relating to the securities issued by them. This stance adopted by the two companies, according to the SEBI, was preposterous. Fifthly, SEBI had sought details of the number of application forms circulated, the number of application forms received, the amount of subscription deposited, the number and list of allottees, the number of OFCDs allotted, the value of allotment, the date of allotment, the date of dispatch of debenture certificates, copies of board/committee meetings, minutes of meetings during which the said allotment was approved. According to SEBI, since the information sought was merely basic, the denial of the same by the companies amounted to a calculated and deliberate denial of information. Sixthly, information sought by the SEBI depicted at serial number fifthly hereinabove, was solicited to determine the authenticity of the assertion made by the companies, that the OFCDs had been issued by way of private placement. Whereas, it was believed by the SEBI that the companies had issued the OFCDs to the public. Seventhly, since the companies had adopted the position, that the OFCDs were issued by way of private placement to friends, associate group companies, workers/employees and other individuals who were associated/affiliated/connected to the Sahara Group of Companies, according to SEBI it was highly improbable, that the details and particulars of such friends, associate group companies, workers/employees and other individuals which were associated/affiliated/connected to the Sahara India Group of companies, was not available with them (for being passed over to SEBI)."

wherein the following summary of inferences was recorded:

"i. The issue of OFCDs by the companies have been made to a base of investors that are fifty or more in number.
ii. The companies themselves tacitly admit the same as they have no case that funds have been mobilized from a group smaller than fifty.
iii. A resolution under section 81(1A) of the Act does not take away the 'public' nature of the issue.
iv. The filing of a prospectus under the Act signifies the intention of the issuer to raise funds from the public.

Therefore, for the aforesaid reasons, the submission of the companies that their OFCD issues are made on private placement and do not fall under the definition of a public issue, is not tenable. The instances discussed above would prima facie suggest that the offer of OFCDs made by the companies is "public" in nature ."

30. Based on the DIP Guidelines and the ICDR Regulations, the SEBI (FTM) found, that the two companies had committed, the following violations:

a) failure to file the draft offer document with SEBI;
b) failure to mention the risk factors and provide the adequate disclosures that is stipulated, to enable the investors to take a well-informed decision.
c) denied the exit opportunity to the investors.
d) failure to lock-in the minimum promoters contribution.
e) failure to grade their issue.
f) failure to open and close the issue within the stipulated time limit.
g) failure to obtain the credit rating from the recognized credit rating agency for their instruments.
h) failure to appoint a debenture trustee
i) failure to create a charge on the assets of the company.
j) failure to create debenture redemption reserve, etc."

Based on the above conclusions, the SEBI (FTM) issued directions by way of an ad interim ex parte order, restraining SIRECL and SHICL from mobilizing funds under their respective RHPs, dated 13.03.3008 and 06.10.2009. The companies were also directed, not to offer their equity shares/OFCDs or any other securities, to the public and/or invite subscription in any manner whatsoever, either directly or indirectly, till further directions. The SEBI's ad interim ex parte order dated 24.11.2010 expressly referred to Mr. Subrata Roy Sahara, Ms. Vandana Bhargava, Mr. Ravi Shankar Dubey and Mr. Ashok Roy Choudhary. They were named as promoter and directors, in the RHPs filed by the two companies, before the respective Registrar of Companies. The above named promoter and directors, were expressly prohibited from issuing prospectus, or any other offer document, or issuing advertisement for soliciting money, from the

public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders.

31. The SEBI's order dated 24.11.2010 was challenged before the High Court through Writ Petition No.11702 (M/B) of 2010 on 29.11.2010. On 13.12.2010, the High Court stayed the operation of the order dated 24.11.2010. On an application filed by the SEBI, the High Court vacated its interim order. While vacating the interim order, the High Court observed, *inter alia*:

> "4. …..The petitioners were supposed to cooperate in the inquiry and their interest was protected by restraining the SEBI from passing any final orders. The matter was being heard finally under the expectation that the assurances given by the learned counsel for the petitioners would be honoured by the petitioners and the matter would be finished at the earliest. But the petitioners appear to have thought otherwise. The court's order cannot be allowed to be violated or circumvented by any means.
>
> We, therefore, do not find any ground to continue with the interim order, which is hereby vacated for the own conduct of the petitioners and for which they have to thank their own stars."
>
> (emphasis is ours)

It is, therefore, apparent that the High Court had denied relief to the companies because of their non-cooperative attitude in the inquiry being conducted by the SEBI. It was also sought to be concluded against the two companies, that they had not honoured the commitments given to the Court. And further that, they were guilty of violating and circumventing Court's orders. The order passed by the High Court, is yet another instance of the defiance of the two companies, in allowing their affairs to be investigated.

32. The SEBI issued yet another show cause notice dated 20.5.2011, to the two companies, principally on the same facts and grounds, as the earlier show cause notice dated 24.11.2010. The above notices were contested by both the companies, again on legal technicalities. Importantly, the companies yet again, did not furnish any factual details to the SEBI. The defiance continued.

33. On 23.6.2011, the SEBI(FTM), passed the following directions:-

> "1. The two Companies, Sahara Commodity Services Corporation Limited (earlier known as Sahara India Real Estate Corporation Limited) and Sahara Housing Investment Corporation Limited and its promoter, Mr. Subrata Roy Sahara, and the directors of the said companies, namely, Ms. Vandana Bhargava, Mr. Ravi Shankar Dubey and Mr. Ashok Roy Choudhary, jointly and severally, shall forthwith refund the money collected by the aforesaid companies through the Red Herring Prospectus dated March 13, 2008 and October 6, 2009, issued respectively, to the subscribers of such Optionally Fully Convertible Debentures with interest of 15% per annum from the date of receipt of money till the date of such repayment.
>
> 2. Such repayment shall be effected only in cash through Demand Draft or Pay Order.
>
> 3. Sahara Commodity Services Corporation Limited (earlier known as Sahara India Real Estate Corporation Limited) and Sahara Housing Investment Corporation Limited shall issue public notice, in all editions of two National Dailies (one English and one Hindi) with wide circulation, detailing the modalities for refund, including details on contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect.
>
> 4. Sahara Commodity Services Corporation Limited (earlier known as Sahara India Real Estate Corporation Limited) and Sahara Housing Investment Corporation Limited are restrained from accessing the securities market for raising funds, till the time the aforesaid payments are made to the satisfaction of the Securities and Exchange Board of India.

> 5. Further, Mr. Subrata Roy Sahara, Ms. Vandana Bhargava, Mr. Ravi Shankar Dubey and Mr. Ashok Roy Choudhary are restrained from associating themselves, with any listed public company and any public company which intends to raise money from the public, till such time the aforesaid payments are made to the satisfaction of the Securities and Exchange Board of India."
>
> (emphasis is ours)

34. The order of the SEBI (FTM) came to be assailed by the two companies, before the SAT. Even during the course of appellate proceedings, the companies did not disclose, the factual position. The companies, continued to contest the claim of the respondents, by relying on technicalities of law, i.e., on the same legal parameters, as had been adopted by them before the SEBI (FTM). The SAT by its order dated 18.10.2011 upheld the order passed by the SEBI (FTM) dated 23.6.2011. The SAT directed the appellant companies to refund the entire money collected from the investors, within six months (from the date of its order dated 18.10.2011).

35. Thereupon the matter was brought to this Court by way of appeals preferred by the two companies concerned, i.e., Civil Appeal nos. 9813 and 9833 of 2011. On 28.11.2011, this Court passed the following interim order:-

> "By the impugned order, the appellants have been asked by SAT to refund a sum of Rs.17,400 crores approximately on or before 28.11.2011. We extend the period upto 9.1.2012."

It is, therefore, that this Court while issuing the interim directions, merely permitted the two companies concerned to refund a sum of Rs.17,400 crores (approximately) as directed by the SEBI (FTM) and SAT, upto 9.1.2012. It is, however, imperative to understand, that this Court while

passing the above interim order, did not vary the manner of making refunds, in case the two companies concerned decided to make any refund to the investors. In this behalf it needs to be noticed, that in its order dated 23.6.2011, the SEBI (FTM) had clearly directed, that such repayment could only be made in cash through demand draft or pay order. No liberty was granted to the two companies, to convert the investment made by the holders of the OFCD's, into similar investments, with the other companies. In other words, cash conversion in any other format, was not permitted. To comply with the letter and spirit of the above orders, therefore, even if refund was to be made by the investors, it could have been done, only by way of demand drafts or pay orders, and not, by way of cash. The alleged cash payment made by the two companies, while redeeming the OFCD's, was therefore per se illegal, and in violation of the orders, dated 23.6.2011 (passed by the SEBI (FTM)) and 18.10.2011 (passed by the SAT). We must, therefore emphatically point out, that the very submission now made by the companies, that the investors were refunded their deposits by way of cash, is per se another tactic in the series of manoeuvres adopted by the two companies, to defeat the process of law. Factually, there is no acceptable proof of such refund. This aspect is being dealt with separately, hereafter.

36. During the course of adjudication of Civil Appeal No.9813 of 2011 (along with Civil Appeal No.9833 of 2011), the issues were canvassed at the behest of the appellants, as is apparent from the order passed by this

Court on 31.8.2012, on the same legal issues, which were canvassed on behalf of the companies under reference before the SEBI (FTM) and the SAT. In the adjudication rendered by this Court, it was concluded that the material sought by the SEBI from the companies, though available with them, must be deemed to have been consciously withheld. Since the companies willfully avoided to furnish the information to the SEBI, it was felt that an adverse inference should be drawn against the two companies. Having examined the factual details available on the record, this Court also expressed an impression that the material made available by the companies "… was totally unrealistic and could well be fictitious, concocted and made up…". While disposing of the appeals, filed by the two companies, this Court was not certain whether all the subscribers were genuine, and therefore, while concluding the matter, this Court in its order dated 31.08.2012, expressed the hope that all the subscribers were genuine. And so also, the subscription amount, as there was indeed a needle of suspicion on this subject as well. Accordingly this Court, in its order dated 31.8.2012 observed, that "… whole affair being doubtful, dubious and questionable…". These observations were recorded, because the actions of the appellants made the genuineness of the affairs of the two companies, questionable.

37. It is also important for us to record that the positive position adopted by the SEBI before this Court, during the disposal of Civil Appeal Nos.9813 and 9833 of 2011 was, that neither SIRECL nor SHICL ever provided

details of its investors to the SEBI (FTM) or to the SAT. The two companies had, contested the proceedings initiated against them, only on technical grounds. We may record, that we were told, that even before the SAT, no details were furnished. As against the above, the position adopted by the SIRECL before us, during the course of the appellate proceedings was, that SIRECL had furnished a compact disc to the SEBI (FTM), along with its operating key. The compact disc, according to learned counsel, had complete investor related data, pertaining to SIRECL. Whilst it was acknowledged by the SEBI before this Court, that a compact disc (allegedly containing details about the investors) was furnished by SIRECL, yet it was emphatically pointed out, that its operating key was withheld. This was another deliberate manoeuvre adopted, to withhold investor related information from the SEBI(FTM). Resultantly, no details whatsoever were ever disclosed by SIRECL either before the SEBI (FTM) or the SAT.

38. The position adopted by SHICL was even worse. It is necessary to place on record the fact, that the SHICL, one of the two concerned companies, never ever disclosed the names and other connected details of its investors to the SEBI. We made a repeated poser, during open hearing (in the present writ petition), about SHICL having never furnished its investor details. The above position was confirmed by learned counsel representing the SEBI. Unfortunately, Mr. S. Ganesh, learned Senior Counsel for the petitioner, on the last day of hearing, ventured to contest

the above position. He handed over to us two volumes of papers running into 260 pages under the title – Note on information provided by SHICL to the SEBI). We required him to invite our attention to documents indicating disclosure of the above information. His subterfuge stood exposed, when no material depicting disclosure of names and other connected details by SHICL to the SEBI emerged from the two volumes of papers, handed over to us. What is essential to record is, that till date SHICL has never ever supplied investor related details to the SEBI. A fact about which there is now no ambiguity (specially after, learned counsel, filed the aforementioned two volumes of papers). Does it lie in the mouth of learned counsel to assert, that unjustified conclusions have been recorded, in the impugned order dated 4.3.2014 against the two companies without any basis? We are fully satisfied, that the factual position depicted hereinabove, fully justifies our mentioning in the impugned order (dated 4.3.2014), that the contemnors had maintained an unreasonable stand throughout the proceedings before the SEBI, SAT, High Court, and even before this Court.

39. According to the assertions made by SIRECL, it had collected an amount of Rs.19,400,86,64,200 through its open ended schemes between 25.4.2008 and 13.4.2011. Its collections, after taking into consideration redemptions, statedly stood at Rs.17,565,53,22,500 as on 31.8.2011. The above collection was allegedly made from 2,21,07,271 investors. It is not possible for us to narrate similar figures in respect of the amount collected

by SHICL, or for that matter, the number of investors, because the records depicting the above details have never been disclosed by SHICL. The figures mentioned in the order dated 31.8.2012, are therefore, the figures provided by SIRECL and SHICL. All those figures are unauthenticated. In sum and substance, nothing was known. All assertions made by the two companies were subject to verification. The above factual position indicates the basis and the rationale, of the directions issued by this Court on 31.8.2012. We had simply required the two companies, to deposit the admitted investor funds. We had directed disbursement, only on verification. The factual position depicted above also *inter alia* depicts, that the petitioner – Mr. Subrata Roy Sahara as promoter, and Mr. Ashok Roy Choudhary and Mr. Ravi Shankar Dubey, as directors, were always treated as actively involved in the matter, and therefore, various orders (including restraint orders) were passed, wherein they were expressly named. Since they shouldered the overall responsibility of the affairs of the two companies, it was fully justified for this Court, to require them to comply with the orders passed by this Court on 31.8.2012 and 5.12.2012.

IV. Efforts made by this Court, to cajole the contemnors, including the petitioner – Mr. Subrata Roy Sahara, for compliance of the orders of this Court, dated 31.8.2012 and 5.12.2012

40. During the course of hearing of the instant writ petition, we were given to understand, that all counsel representing the petitioner were taken by surprise when we passed the order dated 4.3.2014 (extracted at the beginning of this order). It was submitted, that a person of the eminence of

the petitioner, could not be suddenly sent to jail without notice. It was asserted, that the petitioner had entered appearance to assist this Court, and to explain his position, but no opportunity was granted to him. Some of the learned counsel representing the petitioner accordingly described the impugned order dated 4.3.2014 as a "draconian order". Because, according to them, the said impugned order, had violated the petitioner's rights under Article 21 of the Constitution of India. And also because, it was issued without affording the petitioner an opportunity of showing cause.

41. The *bona fides* of the above submission, are difficult to fathom. It seems to us, that rather than the petitioner tendering his explanation to this Court, for not complying with the orders passed by it, the petitioner's counsel were posing a question to this Court to explain to them, the legitimacy of the procedure adopted by the Court. In our understanding, learned counsel who represented the petitioner, were surely insincere to the cause of justice, when they drummed their assertions, without blinking an eye; since they were aware, that the factual position was otherwise. For learned counsel for the petitioner, to advance such submissions, to state the least, was unimaginable. Both Mr. Ram Jethmalani and Dr. Rajeev Dhawan, were lead counsel representing the contemnors in the contempt proceedings. They surely ought to have known better, because they had appeared in the contempt proceedings, in the defence of the contemnors. It is not for a Court, to tender any explanation to any litigant,

or to his counsel. Accordingly, it should never be considered as obligatory, on the part of this Court, to tender any such explanation. Undoubtedly, it is open to a party to seek review, of an order passed by this Court, under Article 137 of the Constitution of India. Or to file a curative petition, after a review petition had been rejected, as laid down by this Court in Rupa Ashok Hurra's case (supra), if it is felt that a serious mistake had been committed. Just for this case, in order to depict the position in its correct perspective, we shall narrate in the succeeding paragraphs, the long rope which was extended to the petitioner (as also, to the other contemnors) to comply with the directions issued by this Court (on 31.8.2012 and 5.12.2012), before the order dated 4.3.2014 was passed.

42. Ever since the disposal of Civil Appeal nos. 9813 and 9833 of 2011, on the issue of compliance (as also, the alleged non-compliance), one or the other proceeding was listed for hearing, for no less than the following 35 dates, before the order dated 4.3.2014 was passed:-

> "11.9.2012, 28.9.2012, 19.10.2012, 19.11.2012, 8.1.2013, 6.2.2013, 8.2.2013, 19.2.2013, 25.2.2013, 4.4.2013, 22.4.2013, 2.5.2013, 8.5.2013, 17.7.2013, 24.7.2013, 30.7.2013, 6.8.2013, 13.8.2013, 26.8.2013, 2.9.2013, 16.9.2013, 4.10.2013, 28.10.2013, 31.10.2013, 1.11.2013, 20.11.2013, 21.11.2013, 11.12.2013, 17.12.2013, 2.1.2014, 9.1.2014, 28.1.2014, 11.2.2014, 20.2.2014 and 26.2.2014"

In recording the dates of hearing, we have not taken into consideration the dates of hearing in Civil Appeal no. 8643 of 2012 (and Writ Petition (Civil) no. 527 of 2012), during the proceedings whereof a three-Judge Bench of this Court, passed the order dated 5.12.2012. Surely, during the 35 dates of hearing, whereafter the order dated 4.3.2014 was passed, the petitioner

must have been able to understand, what was going on. For the proceedings were not smooth and favourable for the petitioner. A number of earlier orders, affected the petitioner's rights adversely. It is therefore, that we have recorded hereinabove, that the stand canvassed by learned counsel was unimaginable. We may therefore first record the happenings, after we passed the order dated 31.8.2012.

43. On 6.2.2013, this Court issued notices in Contempt Petition (Civil) nos. 412 and 413 of 2012. Personal appearance of the contemnors (which included the petitioner) was dispensed with. The SEBI was also directed to file a status report. The receipt of the above notices, should have been the first information to the petitioner, of this Court's concern, about the non-compliance of the order dated 31.8.2012. The petitioner came to be represented in the contempt proceedings through counsel, on 4.4.2013. Learned counsel for the petitioner, have however been making their submissions as if, the petitioner had entered appearance only on 4.3.2014, when the impugned order was passed. There were actually 25 dates of hearing after the petitioner had been represented in the contempt proceedings, and before the impugned order was passed (on 4.3.2014).

44. We were shocked, when we were informed that extension of time to comply with this Court's orders dated 31.8.2012 and 5.12.2012 was, in the first instance, sought by the two companies, from the SEBI. When the SEBI declined, the concerned parties approached the SAT by preferring Appeal nos. 42 of 2013 (Subrata Roy Sahara v. SEBI), 48 of 2013 (SHICL

v. SEBI), 49 of 2013 (SIRECL v. SEBI) and 50 of 2013 (Ashok Roy Chaudhary v. SEBI). For just the same purpose, Writ Petition no. 2088 of 2013, was filed before the High Court. We are at a loss to understand, how relaxation of an order passed by this Court, could have been sought either from the SEBI or the SAT, or for that matter, even from the High Court. How this abuse of process, was handled by us, stands recorded in a subsequent paragraph.

45. The SEBI filed Interlocutory Application nos. 72 and 73 of 2013. Notice in the above applications was issued for 8.5.2013. The above Interlocutory Applications pertained to proceedings initiated by the contemnors before the SAT and the High Court. The said proceedings were initiated by the contemnors, after the SEBI had declined to extend the time frame, fixed by this Court through its order dated 31.8.2012. Interestingly, the petitioner in the instant writ petition, had initiated one such proceeding in his own name (Appeal no. 42 of 2013, Subrata Roy Sahara v. SEBI). We are of the *prima facie* view, that the initiation of the above proceedings was aimed at diverting the issue of implementation of our order dated 31.8.2012. Accordingly on 17.7.2013, we directed "… that no High Court, Securities Appellate Tribunal and any other Forum shall pass any order against the orders passed by the Securities and Exchange Board of India (SEBI) in implementation of this Court's judgment dated 31.8.2012".

46. On 24.7.2013, this Court issued notice, in Contempt Petition (Civil) no. 260 of 2013 on account of non-compliance of the orders passed by this Court on 5.12.2012. The order dated 5.12.2012 (passed in Civil Appeal no. 8643 of 2012 and Writ Petition (Civil) no. 527 of 2012) is being extracted hereunder:-

> "This appeal is directed against the judgment and order dated 29th November, 2012, passed by the Securities Appellate Tribunal, in Appeal No.221 of 2012, holding that the same was premature and was not, therefore, maintainable
>
> 2. In earlier appeals, being C.A.No.9813 of 2011 and C.A.No.9833 of 2011, this Court was concerned with the powers of the Securities and Exchange Board of India (SEBI) under Section 55A(b) of the Companies Act, 1956, to administer various provisions relating to issue and transfer of securities to the public by listed companies or companies which intend to get their securities listed on any recognized Stock Exchange in India and also the question whether Optionally Fully Convertible Debentures, offered by the appellants, should have been listed on any recognized Stock Exchange in India, being Public Issue under Section 73 read with Section 60B and allied provisions of the Companies Act. The said appeals were heard and finally disposed of on 31st August, 2012, with the following directions:-
>
> > "1. Saharas (SIRECL & SHICL) would refund the amounts collected through RHPs dated 13.3.2008 and 16.10.2009 along with interest @ 15% per annum to SEBI from the date of receipt of the subscription amount till the date of repayment, within a period of three months from today, which shall be deposited in a Nationalized Bank bearing maximum rate of interest.
> >
> > 2. Saharas are also directed to furnish the details with supporting documents to establish whether they had refunded any amount to the persons who had subscribed through RHPs dated 13.3.2008 and 16.10.2009 within a period of 10 (ten) days from the pronouncement of this order and it is for the SEBI (WTM) to examine the correctness of the details furnished.
> >
> > 3. We make it clear that if the documents produced by Saharas are not found genuine or acceptable, then the SEBI

(WTM) would proceed as if the Saharas had not refunded any amount to the real and genuine subscribers who had invested money through RHPs dated 13.3.2008 and 16.10.2009.

4. Saharas are directed to furnish all documents in their custody, particularly, the application forms submitted by subscribers, the approval and allotment of bonds and all other documents to SEBI so as to enable it to ascertain the genuineness of the subscribers as well as the amounts deposited, within a period of 10 (ten) days from the date of pronouncement of this order.

5. SEBI (WTM) shall have the liberty to engage Investigating Officers, experts in Finance and Accounts and other supporting staff to carry out directions and the expenses for the same will be borne by Saharas and be paid to SEBI.

6. SEBI (WTM) shall take steps with the aid and assistance of Investigating Authorities/Experts in Finance and Accounts and other supporting staff to examine the documents produced by Saharas so as to ascertain their genuineness and after having ascertained the same, they shall identify subscribers who had invested the money on the basis of RHPs dated 13.3.2008 and 16.10.2009 and refund the amount to them with interest on their production of relevant documents evidencing payments and after counter checking the records produced by Saharas.

7. SEBI (WTM), in the event of finding that the genuineness of the subscribers is doubtful, an opportunity shall be afforded to Saharas to satisfactorily establish the same as being legitimate and valid. It shall be open to the Saharas, in such an eventuality to associate the concerned subscribers to establish their claims. The decision of SEBI (WTM) in this behalf will be final and binding on Saharas as well as the subscribers.

8. SEBI (WTM) if, after the verification of the details furnished, is unable to find out the whereabouts of all or any of the subscribers, then the amount collected from such subscribers will be appropriated to the Government of India.

9. We also appoint Mr. Justice B.N. Agrawal, a retired Judge of this Court to oversee whether directions issued by this Court are properly and effectively complied with by the SEBI (WTM) from the date of this order. Mr. Justice B.N. Agrawal would also oversee the entire steps adopted by SEBI

(WTM) and other officials for the effective and proper implementation of the directions issued by this Court. We fix an amount of Rs.5 lakhs towards the monthly remuneration payable to Mr. Justice B.N. Agrawal, this will be in addition to travelling, accommodation and other expenses, commensurate with the status of the office held by Justice B.N. Agrawal, which shall be borne by SEBI and recoverable from Saharas. Mr. Justice B.N. Agrawal is requested to take up this assignment without affecting his other engagements. We also order that all administrative expenses including the payment to the additional staff and experts, etc. would be borne by Saharas.

10. We also make it clear that if Saharas fail to comply with these directions and do not effect refund of money as directed, SEBI can take recourse to all legal remedies, including attachment and sale of properties, freezing of bank accounts etc. for realizations of the amounts.

11. We also direct SEBI(WTM) to submit a status report, duly approved by Mr. Justice B.N. Agrawal, as expeditiously as possible, and also permit SEBI (WTM) to seek further directions from this Court, as and when, found necessary. The appeals were, therefore, dismissed with the aforesaid directions.

3. As indicated above, the present appeal is directed against the order of the Securities Appellate Tribunal, in the Appeal, being No.221 of 2012, which had been filed on 27th November, 2012, complaining that the SEBI had not accepted the documents, which were to be furnished to it by the appellants, since they were tendered a couple of days after the stipulated period.

4. We are not inclined to interfere with the substance of the order of the Tribunal impugned in this appeal. The only question which we are inclined to consider is whether the time for implementing the directions contained in the earlier order of 31st August, 2012, may be extended or not.

5. Mr. Gopal Subramanium, learned Senior Counsel, submitted that after the aforesaid order had been passed, certain amounts had been paid to investors and that according to them a sum of ` 5120/- Crores remained to be paid to SEBI, out of the amount already indicated, for the purpose of distribution to the investors.

6. Having heard learned Senior Counsel, Mr. Gopal Subramanium, appearing for the appellants, Mr. Datar, for SEBI and

Mr. Vikas Singh, appearing for Universal Investors Association & Ors., who has filed a separate Writ Petition, we are not inclined to accept the submissions made by Mr. Gopal Subramanium, at their face value, since, in the order of 31st August, 2012, it has been indicated that if any payments had been made, the details thereof, along with supporting documents, were to be submitted to SEBI to verify the same. Essentially, the appellants have failed on both counts, since neither the amount indicated in the order, together with interest @ 15% per annum, accrued thereon, has been paid, nor have the documents been submitted within the time stipulated in the said order. The reliefs prayed for in the writ petition filed by Universal Investors Association,amounts to a review of the order passed by this Court on 31.08.2012.

7. We, therefore, dispose of the appeal and the writ petition, as also the intervention applications with the following directions:-

> *(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, 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 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 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 relisation of the balance dues.*

8. Let a copy of this order be made available to Mr. Justice B.N. Agrawal, who has been appointed by this Court, by tomorrow, to enable His Lordship to oversee the working of the Order of 31st August, 2012, and this Order passed by us today.

> 9. Having regard to the nature of the case, the appellants shall bear the costs of the respondent(s) in these proceedings.
>
> 10. In the event any excess payment is found to have been made by the appellants by virtue of the earlier Order and this Order, the same shall be refunded to the appellants by SEBI."
>
> (emphasis is ours)

When the above order was passed by this Court, should the petitioner not have known, that the exercise of seeking extension of time had come to an end, and the first installment of Rs.10,000 crores had to be paid "within the first week of January, 2013"?

47. Even though responses to the contempt petitions referred to above, had been filed, and we were hearing learned counsel representing the contemnors, on the subject of contempt, we were also trying to cajole the two companies, into an understanding that they were obliged to comply with the orders dated 31.8.2012 and 5.12.2012. In our view, compliance of the above orders would reduce the seriousness of the issue. The effort on our part was always to avoid hardship, to any of the concerned parties. But in our above effort, we could not compromise, the interest of the investors. As already noticed, in the discussion recorded under the preceding heading, the two companies never supplied any authentic details of their investors. Nor the details of the moneys collected. Whatever the two companies asserted, had to be accepted on its face value, to proceed further. When learned counsel for the petitioner, made a proposal to secure the amount payable to the investors of the two companies, we were not averse to the proposal. We wished to explore some intermediary means to secure compliance. That would have

deferred adoption of harsher measures. With the above object in mind, we accepted the proposal of the learned counsel for the petitioner (and the other contemnors), to furnish a list of unencumbered immovable properties, which would secure the liability of the two companies (for compliance of the order dated 31.8.2012, as well as, the subsequent order dated 5.12.2012). The list of properties furnished to this Court, could not have been so furnished, without the petitioner's express approval. There can be no doubt about the aforesaid inference, because the stance now adopted by the petitioner shows, that the petitioner is in absolute charge of all the affairs of the companies. And nothing can move without his active involvement. During the course of hearing of the present petition, learned counsel have repeatedly emphasized that further deposits will be possible, only after the petitioner is released from judicial custody. This stance shows, that in the affairs of the Sahara Group, Mr. Subrata Roy Sahara, is the only person who matters. And therefore, the other individual directors, may have hardly any say in the matter.

48. The lists of properties which were provided by the two companies during the above exercise, were rejected by the SEBI, for good reason. It is not necessary for us to record the details herein, why the lists of properties furnished to this Court were found to be unacceptable. We may, however, record, that we were satisfied with the submissions advanced at the behest of the SEBI, that the proposed properties, would not secure the amount of the refund contemplated by the orders of this

court. It is therefore, that another attempt was made, consequent upon an offer made on behalf of the two companies, that other companies within the framework of the Sahara Group, would also make available to the SEBI, their unencumbered immovable properties. Is it possible for anyone to say, after the petitioner agreed to provide the list of immovable properties, that he was not aware of the nature of proceedings being conducted in this Court, or their gravity? Is it possible for the petitioner to say, that he was not aware of the reason, why these lists were being furnished to this Court? There can be no doubt, that it was abundantly clear to the petitioner, that the properties mentioned in the lists furnished, would be sold if necessary, to comply with this Court's order dated 31.8.2012. This was sufficient notice to the petitioner, of the seriousness of the situation.

49. Since our efforts of this Court, to secure the investors' interests, determined vide its order dated 31.8.2012, were being systematically frustrated this Court in order to demonstrate the seriousness of the issue, directed that "… the alleged contemnors (respondents) shall not leave the country without the permission of this Court…" till compliance of the above order. The above direction was issued on 28.10.2013. Is it open to the learned counsel for the petitioner, after the above restraint order was passed, to contend that the petitioner was not aware of the happenings in Court? He was aware that the above restraint order was passed, during the pendency of the contempt proceedings, which were initiated because

of non-compliance of the orders dated 31.8.2012 and 5.12.2012. It is therefore incorrect to contend, that the petitioner had no notice, and was taken unawares. During the course of one of the subsequent hearings (on the subject), learned counsel representing the contemnors, clarified, that the properties in the list provided to this Court, could not be put to sale, in execution of the orders dated 31.8.2012 and 5.12.2012. What was the purpose sought to be achieved, if the properties (included in the list furnished to this Court) could not be sold, for the satisfaction of the judgment dated 31.8.2012? Surely, the contemnors, were taking this Court for a ride. The demeanour of the contemnors to stonewall the process of law, from the time investigation was commenced by the SEBI in 2009, continued even after the judicial process had attained finality, by this Court's order dated 31.8.2012. All along the petitioner feigns ignorance of everything.

50. Even though this Court had no intention to grant any relaxation to the contemnors, on the restraint order passed on 28.10.2013 (by which the contemnors, were stopped from leaving this country), yet when Interlocutory Application no. 4 was filed (in Contempt Petition (Civil) no. 260 of 2013), contending that Mr. Subrata Roy Sahara, had foreign commitments, the Court relaxed the above order, and permitted the petitioner to go abroad. But, simultaneously the Court directed the petitioner, to immediately return back, and be present in the country, in case of non-compliance of this Court's directions, (to submit original title

deeds of unencumbered properties of the Sahara Group of Companies). On 21.11.2013, the Court was informed by the learned counsel for the contemnors, that the properties depicted in the list furnished to this Court (in furtherance of the order dated 28.10.2013), could not be sold without the approval of the Board of Directors, of the concerned companies (to which the individual properties belonged). The Court was then constrained to record, that the order dated 28.10.2013 passed by this Court, had not been complied with, in its letter and spirit. It is, therefore, the Court took one further step to demonstrate to the petitioner, as also, the other contemnors, the seriousness of the issue, by ordering on 21.11.2013 "… that the Sahara Group of Companies shall not part with any movable or immovable property, until further orders..." Is it open to the petitioner to contend, that he had no notice, of the above Court proceedings? The business obligations of the petitioner, were bound to have been seriously affected, by the above order. The petitioner would have to be hugely unconcerned and disinterested, if he was still unaware of the nature of the ongoing contempt proceedings; and where the proceedings were leading to. The Court further directed (by the same order), that all the alleged contemnors would not leave the country, without the permission of this Court. By this, the Court restored its earlier order dated 28.10.2013. This order also had serious repercussions, for the petitioner. When the above order was passed, should the petitioner be permitted to contend, that he did not have any adverse business consequences? If it did, was it open

for him to assert, that he had no notice, and was unaware about the direction towards which, the contempt proceedings were moving?

51. Consequent upon passing of the above order dated 21.11.2013, a fresh list of properties was made available by the companies, to this Court. The Court permitted learned Senior Counsel representing the SEBI, time, to examine the authenticity of the list of properties furnished, including the valuation reports pertaining to the said properties. After a few dates of hearing, learned counsel for the contemnors informed this Court, that the list of properties offered, could not be sold for the execution of this Court's orders dated 31.8.2012 and 5.12.2012. We were then satisfied, that all the efforts made by us were systematically scuttled by the contemnors, by adopting one or the other excuse. The petitioner was adopting these tactics because, he had notice. Notice to comply with the orders dated 31.8.2012 and 5.12.2012. Yet, he stonewalled all efforts for compliance. He adopted the latter. Not even a single paisa has been deposited, after this Court's order dated 5.12.2012.

52. During the pendency of the contempt proceedings, we also decided to determine the veracity of the redemption theory, projected by the two companies. As a matter of law, it was not open to the two companies to raise the aforesaid defence. This is because, exactly the same defence was raised by the two companies, when they had approached this Court by filing Civil Appeal no. 8643 of 2012 (and Writ Petition (Civil) no. 527 of 2012). In the aforesaid Civil Appeal, it was submitted on behalf of the two

companies, that they should be exempted from depositing the amount already redeemed by them. The above contention advanced by the two companies was not accepted, by the three-Judge Division Bench, when it disposed of Civil Appeal no. 8643 of 2012 (and Writ Petition (Civil) no. 527 of 2012) by order dated 5.12.2012. It is, therefore apparent, that the instant defence of having already redeemed most of the OFCD's, was not open to the two companies (and even the contemnors). Yet, so as to ensure, that no injustice was done, we permitted the two companies to place material on the record of this case, to substantiate the factum of redemption. The above issue has been dealt with by us in this judgment (under the heading IX, "A few words, about the defence of redemption of OFCD's, offered by the two companies"). It is, therefore, that details about the conclusions on the alleged redemptions, are not being expressed here. All that needs to be stated is, that the two companies adopted the same tactics, as were adopted by them on all earlier occasions. No material worth the name, was ever produced before this Court, to establish the defence of redemption, even though ample opportunities were afforded to the petitioner to do so. The instant factual position, has been placed on the record of this case, only to demonstrate the efforts made by this Court, to cajole the contemnors (including the petitioner – Mr. Subrata Roy Sahara) into compliance of this Court's orders dated 31.8.2012 and 5.12.2012. In the process, the Court examined each and every defence raised on behalf of the two companies. The Court also examined alternative avenues by which, the compliance of the orders dated

31.8.2012 and 5.12.2012, could be ensured. In recording our conclusions, we may only state, that the petitioner only engaged eminent learned Senior Counsel, to avoid or defer compliance.

53. Having done the utmost, in requiring the contemnors to comply with the orders dated 31.8.2012 and 5.12.2012, wherein this Bench would meet exclusively for the benefit of the contemnors, the Court felt that it had miserably failed, to persuade the contemnors to comply with its directions. Accordingly on 4.3.2014, in exercise of the powers conferred under Articles 129 and 142 of the Constitution of India, this Court ordered the arrest and detention of all the contemnors (except Mrs. Vandana Bhargava) in judicial custody at Delhi, till the next date of hearing. By the order dated 4.3.2014, the Court expressly granted liberty to the contemnors to propose an acceptable solution, for execution of its orders. Mrs. Vandana Bhargava, who was excused from the order of detention, was permitted to coordinate with those whose detention the Court had ordered, so as to enable them to formulate an acceptable solution for execution of the above orders. It is apparent, that right from the beginning, and even after ordering the detention of the contemnors including the petitioner herein, The Court was only endeavouring, to ensure the compliance of the orders passed by this Court on 31.8.2012 and 5.12.2012. On the following date of hearing i.e., on 7.3.2014, at the asking of the learned counsel representing the contemnors, we enhanced the visitation times permissible to the detenues, so as to enable them to meet

their financial consultants and lawyers for two hours every day. On 26.3.2014, unilaterally, and without the asking of the contemnors, the Court also passed the following order:-

> "We have gone through the fresh proposal filed on 25.03.2014. Though the same is not in compliance with our Order dated 31.08.2012 or the Order passed by the three-Judge Bench of this Court on 05.12.2012 in Civil Appeal No.8643 of 2012 and on 25.02.2013 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 inclined to grant interim bail to the contemnors who are detained by virtue of our order dated 04.03.2014, on the condition that 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 nationalized bank be furnished in favour of S.E.B.I. 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 to facilitate the contemnors to further raise the balance amount so as to comply with the Court's Orders mentioned above."

We are not, and have never been interested in the detention of the petitioner (and the two directors) in judicial custody. Our only purpose has been, to ensure compliance of this Court's orders dated 31.8.2012 and 5.12.2012.

54. Despite affording the contemnors close to 40 hearings, and despite putting them to terms which ought to have shown them, that leniency would not be extended forever, the contemnors have remained adamant, and steadfast. They made only one deposit of Rs.5,120 crores on 5.12.2012. Besides that amount, not a single paisa has been deposited by the contemnors. The thought, that repeatedly comes to our mind is, why the two companies had not been able to pay anything for the last about 1½

years (close to 17 months) from this Court's order dated 5.12.2012, whereas, in a period of three/four months (before our order dated 31.8.2012) SIRECL claims to have unilaterally refunded Rs.17,443 crores, and SHICL claims to have on its own, redeemed Rs.5,442 crores, to their investors. If the money could be easily collected and disbursed to the investors then, why not now? Considering the attitude of the petitioner before this Court, one wonders what would happen to the judicial system, if every Court order had to be implemented, in the manner as the one in hand. We are informed, that the total amount presently payable in terms of this Court's order dated 31.8.2012, has swelled up to Rs.36,608 crores. In the above scenario, no other order, but the one passed by us, could have been passed on 4.3.2014.

55. Our leniency is apparent from the fact, that we have by our order dated 26.3.2014 ordered the petitioner and the other contemnors to be released on bail, on the receipt of a payment of Rs.10,000 crores, which is less than a third of the amount presently due. That would constitute, the first small step, taken by the contemnors, for the satisfaction of the orders passed by this Court on 31.8.2012 and 5.12.2012. The above orders must, under all circumstances, be given effect to in letter and spirit, and till that is done, the process of enforcing compliance, shall have to go on. The petitioner may be released from judicial custody, if he complies with our order dated 26.3.2014. That would however not excuse the petitioner from making the balance payment, in terms of the orders dated 31.8.2012

and 5.12.2012, even if it means the re-arrest of the petitioner again and again, for the purpose of compliance of this Court's orders.

V. Whether there is no provision, whereunder an order of arrest and detention can be passed for the execution of a money-decree?

56. One of the emphatic contentions advanced by some of the learned counsel for the petitioner was, that execution of a money-decree by way of arrest was a procedure "unknown to law". Recourse to arrest of an individual for recovery of money, according to one learned counsel, constituted a "draconian order". During the course of their submissions, learned counsel for the petitioner, chose to address the Court by using language, which we had not heard (either as practicing Advocates, or even as Judges in the High Courts or this Court). We would, however, unhesitatingly state, that it is not possible for us to accept, that learned counsel who addressed the instant submission, were unaware of the relevant provisions of law. It is however interesting to notice, that in the written submissions handed over to us during the course of hearing, reference was actually made to such a provision. It was asserted in the written submissions prepared by Mr. Ram Jethmalani, that "No imprisonment for failure to comply with a decree or order for payment of money can be inflicted on a person liable to pay in compliance, without complying with the conditions of Section 51 proviso (b) of the CPC.". A contradiction in terms. But there were many such contradictions, even on facts. A new phase of advocacy seems to have dawned.

57. It is, therefore, that we shall first venture to set out the provisions contained in the Code of Civil Procedure, 1908 (hereinafter referred to as, the CPC), as also, the Code of Criminal Procedure, 1973 (hereinafter referred to as, the Cr.P.C.), to highlight the provisions whereunder, a Court may order arrest and detention, for the execution of a money-decree (or for the enforcement of a financial liability).

58. It is necessary, first of all, to place on record, the provisions of Sections 51, 55 and 58 of the CPC. The same are being extracted hereunder:-

> "51. Powers of Court to enforce execution
> Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree-
>
> (a) by delivery of any property specifically decreed;
>
> (b) by attachment and sale or by the sale without attachment of any property;
>
> (c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;
>
> (d) by appointing a receiver; or
>
> (e) in such other manner as the nature of the relief granted may require:
>
> Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied-
>
> (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,-
>
> (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation.- In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree."

55. Arrest and detention

(1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the Courts of such district to be detained:

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorised to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorised to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable

facility for withdrawing, may enter the room for the purpose of making the arrest:

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The State Government may, by notification in the Official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the State Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he may be discharged, if he has not committed any act of bad faith regarding the subject of the application and if he complies with provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court may release him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

58. Detention and release

(1) Every person detained in the civil prison in execution of a decree shall be so detained,-

(a) where the decree is for the payment of a sum of money exceeding five thousand rupees, for a period not exceeding three months, and

(b) where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks:

> Provided that he shall be released from such detention before the expiration of the said period of detention-
>
> > (i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or
> >
> > (ii) on the decree against him being otherwise fully satisfied, or
> >
> > (iii) on the request of the person on whose application he has been so detained, or
> >
> > (iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance:
>
> Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court.
>
> (1A) For the removal of doubts, it is hereby declared that no order for detention of the judgment-debtor in civil prison in execution of a decree for the payment of money shall be made, where the total amount of the decree does not exceed two thousand rupees.
>
> (2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison."
>
> (emphasis is ours)

A perusal of Section 51 of the CPC, leaves no room for any doubt, that for the execution of a decree for payment of money, an executing Court may order the arrest and detention of the judgment-debtor. Section 55 of the CPC lays down the manner and modalities to be followed, while executing an order of arrest or detention. A perusal of Section 58 of the CPC postulate the detention of a judgment-debtor for up to six weeks for the recovery of a meager amount, of less than Rs.5,000/-. Where the amount is in excess of Rs.5,000/-, the provision postulates, detention for upto three

months. Interestingly, the first proviso to Section 58(1) of the CPC clearly brings out, the purpose of the person's detention. It provides for the concerned person's release, on the satisfaction of the money-decree, even before the duration, for which he had been ordered to be detained. But the second proviso to Section 58(1) of the CPC provides, that such an order of detention would not be revoked "without the order of the Court.". Another interesting aspect pertaining to the detention of an individual for the execution of a money-decree, is contained in Section 58(2) of the CPC, which provides, that a person who has been ordered to be arrested and detained (in the course of execution of a money-decree) and has been released from jail, would not be treated as having been discharged from his debt. In other words, the detention of a judgment-debtor in prison (for the execution of a money-decree), would not liberate/free him from the financial liability which he owes to the decree-holder. It is therefore apparent, from the provisions of the CPC, that a Court can order for the arrest and detention of a person, even for the enforcement of a paltry amount of Rs.2,000/- (and also for recovery of amounts, in excess thereof).

59. We may also refer to the provisions under the Cr.P.C. which mandate arrest and detention, for compliance of a monetary payment. Reference in this behalf is to be made to Sections 125 and 128 of the Cr.P.C., which are being extracted hereunder:-

"125. Order for maintenance of wives, children and parents-

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation: For the purposes of this Chapter.

(a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any Such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation: If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

128. Enforcement of order of maintenance.

A copy of the order of maintenance or interim maintenance and expenses of proceeding, as the case may be, shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance for the maintenance

> or the allowance for the interim maintenance and expenses of proceeding, as the case may be, is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance, or as the case may be, expenses, due."
>
> (emphasis is ours)

Rather than venturing an interpretation of Sections 125 and 128 of the Cr.P.C., in order to demonstrate the nature of orders, that can be passed thereunder, reference may be made to the decision rendered by this Court in Kuldip Kaur v. Surinder Singh, (1989) 1 SCC 405, wherein this Court observed as under:-

> "6. A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a 'mode of enforcement'. It is not a 'mode of satisfaction' of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. Be it also realised that a person ordered to pay monthly allowance can be sent to jail only if he fails to pay monthly allowance 'without sufficient cause' to comply with the order. It would indeed be strange to hold that a person who 'without reasonable cause' refuses to comply with the order of the Court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail. A sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears. Monthly allowance is paid in order to enable the wife and child to live by providing with the essential economic wherewithal. Neither the neglected wife nor the neglected child can live without funds for purchasing food and the essential articles to enable them to live. Instead of providing them with the funds, no useful purpose would be served by sending the husband to jail. Sentencing to jail is the means for achieving the end of enforcing the order by recovering the amount of arrears. It is not a mode of discharging liability. The section does not say so. The Parliament in its wisdom has not said so. Commonsense does not support such a construction. From where does the Court draw inspiration for persuading itself that the

liability arising under the order for maintenance would stand discharged upon an effort being made to recover it? The order for monthly allowance can be discharged only upon the monthly allowance being recovered. The liability cannot be taken to have been discharged by sending the person liable to pay the monthly allowance, to jail. At the cost of repetition it may be stated that it is only a mode or method of recovery and not a substitute for recovery. No other view is possible. That is the reason why we set aside the order under appeal and passed an order in the following terms:

> 'Heard both the sides.
>
> The appeal is allowed. The order passed by the learned Magistrate as confirmed by the High Court in exercise of its revisional jurisdiction to the effect that the amount of monthly allowance payable under Section 125 of the Code of Criminal Procedure is wiped out and is not recoverable any more by reason of the fact that respondent No. 1, Surinder Singh, was sent to jail in exercise of the powers under Section 125 of the Code of Criminal Procedure is set aside. In our opinion, respondent No. 1, husband of appellant, is not absolved of his liability to pay the monthly allowance by reason of his undergoing a sentence of jail and the amount is still recoverable notwithstanding the fact that the respondent No. 1 husband who is liable to pay he monthly allowance has undergone a sentence of jail for failure to pay the same. Our reasons for reaching this conclusion will follow.
>
> So far as the amount of monthly allowance awarded in this particular case is concerned, by consent of parties, we pass the following order in regard to future payments with effect from 15th August, 1986.
>
> We direct that respondent No. 1, Surinder Singh shall pay Rs. 275 (Rs.200 for the wife and Rs.75 for the child) as and by way of maintenance to the appellant Smt. Kuldip Kaur commencing from August 15, 1986. The amount of Rs.275 shall be paid by the 15th of every succeeding month. On failure to pay any monthly allowance for any month hereafter on the part of respondent No. 1, Surinder Singh, the learned Metropolitan Magistrate shall issue a warrant for his arrest, cause him to be arrested and put in jail for his failure to comply with this Court's order and he shall not be released till he makes the payment.
>
> With regard to the arrears which have become due till August 15, 1986, learned Counsel for the appellant states that having regard to the fact that respondent No. 1, has agreed to the

> aforesaid consent order, the appellant will not apply for the respondent being sent to jail under Section 125 of the Code of Criminal Procedure but will reserve the liberty to realize the said amount (Rs.5090 plus the difference between the amount that became due and the amount actually paid under the interim order) under the law except by seeking an order for sending respondent No. 1 to jail.
>
> The appeal will stand disposed of accordingly."
>
> (emphasis is ours)

On the subject in hand, reference may also be made to a recent judgment of this Court in Poongodi v. Thangavel, (2013) 10 SCC 618. The relevant observations rendered by this Court in the above judgment are, being reproduced hereunder:-

> "6. In another decision of this Court in *Shantha v. B.G. Shivananjappa*, (2005) 4 SCC 468, it has been held that the liability to pay maintenance under Section 125 Cr.P.C. is in the nature of a continuing liability. The nature of the right to receive maintenance and the concomitant liability to pay was also noticed in a decision of this Court in *Shahada Khatoon and Ors. v. Amjad Ali and Ors.*, (1999) 5 SCC 672. Though in a slightly different context, the remedy to approach the court by means of successive applications under Section 125(3) Cr.P.C. highlighting the subsequent defaults in payment of maintenance was acknowledged by this Court in *Shahada Khatoon*.
>
> 7. The ratio of the decisions in the aforesaid cases squarely applies to the present case. The application dated 05.02.2002 filed by the Appellants under Section 125(3) was in continuation of the earlier applications and for subsequent periods of default on the part of the Respondent. The first proviso to Section 125(3), therefore did not extinguish or limit the entitlement of the Appellants to the maintenance granted by the learned trial court, as has been held by the High Court.
>
> 8. In view of the above, we are left in no doubt that the order passed by the High Court needs to be interfered with by us which we accordingly do. The order dated 21.04.2004 of the High Court is set aside and we now issue directions to the Respondent to pay the entire arrears of maintenance due to the Appellants commencing from the date of filing of the Maintenance Petition (M.C. No. 1 of 1993) i.e. 4.2.1993 within a period of six months and current maintenance commencing from the month of September, 2013

> payable on or before 7th of October, 2013 and thereafter continue to pay the monthly maintenance on or before the 7th of each successive month. If the above order of this Court is not complied with by the Respondent, the learned Trial Court is directed to issue a warrant for the arrest of the Respondent and ensure that the same is executed and the respondent taken into custody to suffer imprisonment as provided by Section 125(3) Cr.P.C.".
>
> (emphasis is ours)

It is, therefore apparent, that even for a petty amount of maintenance (which in Kuldip Kaur's case (supra) was a meager amount of Rs.275/- per month), the respondent was ordered to be arrested and put in jail for his failure to comply with the Court's order, with a further direction that he would not be released till he had made the payment. Most importantly, the purpose of sending a person to jail, must be understood as being a manner, procedure or device, for the satisfaction of the liability. Arrest and detention is only to coerce compliance. The liability to pay, would stand discharged only by actual payment, of the amount due. Remaining in jail, would not discharge the liability to pay.

60. Insofar as the provisions of the Cr.P.C. are concerned, reference may also be made to Sections 357, 421 and 431, which are being extracted hereunder:-

> "357. Order to pay compensation.
>
> (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment order the whole or any part of the fine recovered to be applied-
>
> (a) in defraying the expenses properly incurred in the prosecution;
>
> (b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

421. Warrant for levy of fine.

(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorizing him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub- section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

431. Money ordered to be paid recoverable as fine.-

Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:

Provided that Section 421 shall, in its application to an order under Section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of Section 421, after the words and figures "under Section 357", the words and figures "or an order for payment of costs under Section 359" had been inserted."

(emphasis is ours)

The above provisions were examined by this Court in K.A. Abbas H.S.A. v. Sabu Joseph & Anr. Etc., (2010) 6 SCC 230, a relevant extract of the observations made in the above judgment, are being reproduced hereunder:-

"17. In Balraj v. State of UP, AIR 1995 SC 1935, this Court has held, that, Section 357(3) Cr. P.C. provides for ordering of payment by way of compensation to the victim by the accused. It is an important provision and it must also be noted that power to award compensation is not ancillary to other sentences but it is in addition

thereto. In Hari Kishan v. Sukhbir Singh and Ors., AIR 1988 SC 2127, this Court has observed that, Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused.

18. In this case, we are not concerned with Sub-section (1). We are concerned only with Sub-section (3). It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.

19. In Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Anr. (2007) 6 SCC 528, this Court differentiated between fine and compensation, and while doing so, has stated that the distinction between Sub-sections (1) and (3) of Section 357 is apparent. Sub-section (1) provides for application of an amount of fine while imposing a sentence of which fine forms a part; whereas Sub-section (3) calls for a situation where a Court imposes a sentence of which fine does not form a part of the sentence.

The court further observed:

> 27. Compensation is awarded towards sufferance of any loss or injury by reason of an act for which an accused person is sentenced. Although it provides for a criminal liability, the amount which has been awarded as compensation is considered to be recourse of the victim in the same manner which may be granted in a civil suit.

Finally the court summed up:

> 31. We must, however, observe that there exists a distinction between fine and compensation, although, in a way it seeks to achieve the same purpose. An amount of compensation can be directed to be recovered as a 'fine' but the legal fiction raised in relation to recovery of fine only, it is in that sense

> `fine' stands on a higher footing than compensation awarded by the Court.

20. Moving over to the question, whether a default sentence can be imposed on default of payment of compensation, this Court in the case of Hari Singh v. Sukhbir Singh and in Balraj v. State of U.P, has held that it was open to all courts in India to impose a sentence on default of payment of compensation under Sub-section (3) of Section 357. In Hari Singh v. Sukhbir Singh (supra), this Court has noticed certain factors which requires to be taken into consideration while passing an order under the section:

> "11. The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The Court may enforce the order by imposing sentence in default."
>
> xxx xxx xxx xxx xxx

22. The law laid down in Hari Singh v. Sukhbir Singh (supra) was reiterated by this Court in the case of Suganthi Suresh Kumar v. Jagdeeshan, (2002) 2 SCC 420. The court observed:

> "5. In the said decision this Court reminded all concerned that it is well to remember the emphasis laid on the need for making liberal use of Section 357(3) of the Code. This was observed by reference to a decision of this Court in, 1989 Cri LJ 116 Hari Singh v. Sukhbir Singh.
>
> xxx xxx xxx xxx xxx
>
> 10. That apart, Section 431 of the Code has only prescribed that any money (other than fine) payable by virtue of an order made under the Code shall be recoverable "as if it were a fine". Two modes of recovery of the fine have been indicated in Section 421(1) of the Code. The proviso to the Sub-section says that if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender

has undergone the whole of such imprisonment in default, no court shall issue such warrant for levy of the amount.

xxx xxx xxx xxx xxx

23. In order to set at rest the divergent opinion expressed in Kunhappu's case (supra), this Court in the case of Vijayan v. Sadanandan K. and Anr., (2009) 6 SCC 652, after noticing the provision of Section 421 and 431 of Cr.PC, which dealt with mode of recovery of fine and Section 64 of IPC, which empowered the courts to provide for a sentence of imprisonment on default of payment of fine, the Court stated:

> "24. We have carefully considered the submissions made on behalf of the respective parties. Since a decision on the question raised in this petition is still in a nebulous state, there appear to be two views as to whether a default sentence on imprisonment can be imposed in cases where compensation is awarded to the complainant under Section 357(3) Cr.P.C. As pointed out by Mr. Basant in Dilip S. Dahanukar's case, the distinction between a fine and compensation as understood under Section 357(1)(b) and Section 357(3) Cr.P.C. had been explained, but the question as to whether a default sentence clause could be made in respect of compensation payable under Section 357(3) Cr.P.C, which is central to the decision in this case, had not been considered.

The court further held:

> 31. The provisions of Sections 357(3) and 431 Cr.P.C., when read with Section 64 IPC, empower the Court, while making an order for payment of compensation, to also include a default sentence in case of non-payment of the same.
>
> 32. The observations made by this Court in Hari Singh's case (supra) are as important today as they were when they were made and if, as submitted by Dr. Pillay, recourse can only be had to Section 421 Cr.P.C. for enforcing the same, the very object of Sub-section (3) of Section 357 would be frustrated and the relief contemplated therein would be rendered somewhat illusory."

24. In Shantilal v. State of M.P., (2007) 11 SCC 243, it is stated, that, the sentence of imprisonment for default in payment of a fine or compensation is different from a normal sentence of imprisonment. The court also delved into the factors to be taken into consideration

while passing an order under Section 357(3) of the Cr.PC. This Court stated:

> "31. …The term of imprisonment in default of payment of fine is not a sentence. It is a penalty which a person incurs on account of non-payment of fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole either in appeal or in revision or in other appropriate judicial proceedings or "otherwise". A term of imprisonment ordered in default of payment of fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount. It is, therefore, not only the *power*, but the *duty* of the court to keep in view the nature of offence, circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of fine."
>
> (emphasis in original)

25. In Kuldip Kaur v. Surinder Singh and Anr., AIR 1989 SC 232, in the context of Section 125 Cr.PC observed that sentencing a person to jail is a mode of enforcement…

xxx xxx xxx xxx xxx

26. From the above line of cases, it becomes very clear, that, a sentence of imprisonment can be granted for default in payment of compensation awarded under Section 357(3) of Cr.PC. The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that there is no purpose is served by keeping a person behind bars. Instead directing the accused to pay an amount of compensation to the victim or affected party can ensure delivery of total justice. Therefore, this grant of compensation is sometimes in lieu of sending a person behind bars or in addition to a very light sentence of imprisonment. Hence on default of payment of this compensation, there must be a just recourse. Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation and imposing another fine would be impractical as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation. While passing an order under Section 357(3), it is imperative for the courts to look at the ability and the capacity of the

> accused to pay the same amount as has been laid down by the cases above, otherwise the very purpose of granting an order of compensation would stand defeated.
>
> xxx xxx xxx xxx xxx
>
> 29. Section 431 clearly provides that an order of compensation under Section 357(3) will be recoverable in the same way as if it were a fine. Section421 further provides the mode of recovery of a fine and the section clearly provides that a person can be imprisoned for non-payment of fine. Therefore, going by the provisions of the code, the intention of the legislature is clearly to ensure that mode of recovery of a fine and compensation is on the same footing. In light of the aforesaid reasoning, the contention of the accused that there can be no sentence of imprisonment for default in payment of compensation under Section 357(3) should fail."
>
> (emphasis is ours)

It is therefore apparent, that even under the provisions of the Cr.P.C. there is an elaborate procedure prescribed, whereunder a person can be subjected to arrest and detention for the satisfaction of a fine or compensation (i.e., for the recovery of a financial liability).

61. From the above provisions of the CPC, as also, the Cr.P.C. it is apparent, that to enforce a financial liability ordered by a Court, one of the permissible means is, by way of arrest and detention. The submissions advanced by the learned counsel for the petitioner, that there is no provision, whereunder, an order of arrest and detention can be passed, for the execution of a money-decree, cannot therefore be accepted. It is also not possible for us to infer, that learned counsel were oblivious of the provisions contained in the civil/criminal procedure codes. It may be pointed out, that there are a large number of standalone statutory

enactments, whereunder arrest and detention is ordered for the execution of a financial liability.

VI. Whether it was imperative for this Court to adopt the procedure prescribed under Section 51 (and other allied provisions) of the CPC?

Whether if the above procedure was not followed, the impugned order passed by this Court on 4.3.2014 was rendered void, and as such, unsustainable in law?

62. Despite the written submission filed by Shri Ram Jethmalani, which we have adverted to in the immediately preceding part of this order, the credit for advancing submissions on the issue depicted in the heading hereinabove, goes to Dr. Abhishek Manu Singhvi, learned Senior Counsel, who also represented the petitioner. It was his submission, that it was imperative for this Court before ordering the detention of the petitioner, to ensure compliance of the preconditions referred to in Section 51 of the CPC. Section 51 is once again being extracted hereunder:-

> "51. Powers of Court to enforce execution
>
> Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree-
>
> (a) by delivery of any property specifically decreed;
>
> (b) by attachment and sale or by the sale without attachment of any property;
>
> (c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;
>
> (d) by appointing a receiver; or
>
> (e) in such other manner as the nature of the relief granted may require:

> Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied-
>
> (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,-
>
> (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or
>
> (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or
>
> (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or
>
> (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.
>
> Explanation.- In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree."
>
> (emphasis is ours)

Referring to Section 51 of the CPC, it was the pointed contention of the learned counsel, that the proviso to Section 51, lays down the preconditions for execution of a money-decree (by way of arrest and detention, in prison). While inviting our attention to the aforesaid proviso, it was asserted, that it was imperative for a Court, to afford an opportunity to show cause to a judgment-debtor, before he is committed to prison. Furthermore, while interpreting the above proviso, it was the submission of learned Senior Counsel, that such detention could be ordered, only and

only, if the Court felt that the judgment-debtor had consciously obstructed or delayed the execution of a money-decree. Such active obstruction or delay, according to the learned counsel, could be inferable, if the Court was apprehensive, that the judgment-debtor would abscond or leave the local limits of the jurisdiction of the Court. Or if the Court was satisfied, that the judgment-debtor had dishonestly transferred, concealed or removed his property, so as to avoid the execution of the money-decree. Or if it was found by the Court, that the judgment-debtor had committed an act of bad faith in relation to his property, with the above stated objectives. Or if the Court could arrive at the conclusion, that even though the judgment-debtor had means to pay the amount expressed in the decree (or some substantial part thereof), yet he was refusing or neglecting to pay the same. According to learned counsel, any one of the above alternatives would enable the Court concerned, to enforce payment, by way of arrest and detention. It was however the contention of the learned Senior Counsel, that none of the above preconditions existed, when this Court all of a sudden, without affording an opportunity to the petitioner, ordered his arrest and detention along with two other directors on 4.3.2014 (by passing the impugned order).

63. In addition to the above submission, learned Senior Counsel invited our attention to Order XXI rules 37 and 40 of the CPC. The above Rules are being extracted hereunder:-

> "37. Discretionary power to permit judgment-debtor to show cause against detention in prison

(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest

(1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest :

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in

> the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.
>
> (4) A judgment-debtor released under this rule may be re-arrested.
> (5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release."
>
> (emphasis is ours)

Relying on the afore-extracted rules from Order XXI of the CPC, it was sought to be asserted, that a show cause notice to a judgment-debtor was imperative, before he could be committed to civil prison. In fact, according to learned counsel, rule 40 extracted above, affords an opportunity to the judgment-debtor to lead evidence in order to demonstrate, why he should not be committed to civil prison. Based on the aforementioned assertions, it was sought to be contended, that since no procedure, of the nature referred to hereinabove, had been followed before issuing the order dated 4.3.2014, the said order must be treated as void, as it must be deemed to have been passed in violation of the mandatory procedure, established by law.

64. In order to support his above submissions, learned Senior Counsel also placed reliance on Supreme Court Rules, 1966. He invited our attention to Order XIII rule 6, which is being reproduced hereunder:-

> "Order XIII
> Judgments, decrees and Orders
>
> 6. The decree passed or order made by the Court in every appeal, and any order for costs in connection with the proceedings therein, shall be transmitted by the Registrar to the Court or Tribunal

> from which the appeal was brought, and steps for the enforcement of such decree or order shall be taken in that court or Tribunal in the way prescribed by law."
>
> (emphasis is ours)

It was sought to be asserted, on the basis of the above rule, that the power of execution of an order passed by this Court in appeal, did not rest with this Court, but was to be exercised by the Court or Tribunal concerned, in the manner "prescribed by law". It was accordingly asserted, that this Court had transgressed the aforesaid rule framed by this Court, inasmuch as, it had exercised the power of an executing Court while passing the order dated 4.3.2014, whereas, no such power was vested in this Court.

65. In order to demonstrate, that it was not within the jurisdiction of this Court (in exercise of the power vested in it under Article 142 of the Constitution of India), to pass the impugned order dated 4.3.2014, learned Senior Counsel placed reliance on the judgment rendered by this Court in Supreme Court Bar Association's case (supra), wherein this Court had declared the legal position as under:-

> "47. The plenary powers of this court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction, apart from the statutes. It stands upon the foundation, and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice

> according to law. There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent "clogging or obstruction of the stream of justice". It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purpose of the Article, viz., to do complete justice between the parties. It cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties."

Reliance was also placed by the learned Senior Counsel, for the same objective, on P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578. In order to understand the exact purport of the decision, learned counsel invited our attention to the factual position which constituted the basis of the above adjudication. The factual position has been expressed in paragraph 2 of the above judgment, which is being reproduced hereunder:-

> "2. In Criminal Appeal No.535/2000 the appellant was working as an Electrical Superintendent in the Mangalore City Corporation. For the check period 1.5.1961 to 25.8.1987 he was found to have amassed assets disproportionate to his known sources of income. Charge-sheet accusing him of offences under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 was filed on 15.3.1994. The accused appeared before the Special Court and was enlarged on bail on 6.6.1994. Charges were framed on 10.8.1994 and the case proceeded for trial on 8.11.1994. However,

> the trial did not commence. On 23.2.1999 the learned Special Judge who was seized of the trial directed the accused to be acquitted as the trial had not commenced till then and the period of two years had elapsed which obliged him to acquit the accused in terms of the directions of this court in Raj Deo Sharma Vs. State of Bihar (1998) 7 SCC 507 (hereinafter, Raj Deo Sharma-I). The State of Karnataka through the D.S.P. Lokayukta, Mangalore preferred an appeal before the High Court putting in issue the acquittal of the accused. The learned Single Judge of the High Court, vide the impugned order, allowed the appeal, set aside the order of acquittal and remanded the case to the Trial Court, forming an opinion that a case charging an accused with corruption was an exception to the directions made in Raj Deo Sharma-I as clarified by this Court in Raj Deo Sharma (II) Vs. State of Bihar (1999) 7 SCC 604. Strangely enough the High Court not only condoned a delay of 55 days in filing the appeal against acquittal by the State but also allowed the appeal itself -- both without even issuing notice to the accused. The aggrieved accused has filed this appeal by special leave. Similar are the facts in all the other appeals. Shorn of details, suffice it to say that in all the appeals the accused persons who were facing corruption charges, were acquitted by the Special Courts for failure of commencement of trial in spite of lapse of two years from the date of framing of the charges and all the State appeals were allowed by the High Court without noticing the respective accused persons."

In the factual scenario noticed hereinabove, this Court recorded its conclusions, in respect of the power available to Constitutional Courts, by recording the following observations:-

> "27. Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, in our opinion, cannot be done by judicial directives and within the arena of the judicial law-making power available to constitutional courts, howsoever liberally we may interpret Articles 32, 21, 141 and 142 of the Constitution. The dividing line is fine but perceptible. Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought

> to the notice of the court. This is permissible for judiciary to do. But it may not, like legislature, enact a provision akin to or on the lines of Chapter XXXVI of the Code of Criminal Procedure, 1973."

It was, therefore the vehement contention of the learned counsel for the petitioner, that the order passed by this Court was clearly impermissible, not only under the provisions of the CPC, but also in terms of the Supreme Court Rules, 1966, coupled with the legal position declared by this Court.

66. Before endeavouring to deal with the submissions advanced at the hands of the learned counsel for the petitioner, on the basis of Section 51 of the CPC, and other allied provisions referred to hereinabove, it is relevant to keep in mind, that the orders dated 31.8.2012 and 5.12.2012 (the implementation whereof is subject matter of consideration), arose out of proceedings initiated by the SEBI (FTM), under the SEBI Act. In the context under reference, it is necessary to peruse Sections 11(3), 15U and 15Y of the SEBI Act. The same are accordingly being extracted hereunder:-

> "11(3) Notwithstanding anything contained in any other law for the time being in force while exercising the powers under 22 clause (i) or clause (ia) of sub-section (2) or sub-section (2A), the Board shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:
>
> (i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;
>
> (ii) summoning and enforcing the attendance of persons and examining them on oath;
>
> (iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;

(iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2A);

(v) issuing commissions for the examination of witnesses or documents.

15U. Procedure and powers of the Securities Appellate Tribunal-

(1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Securities Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it ex parte;

(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(h) any other matter which may be prescribed.

(3) Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Securities Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973(2 of 1974).

15Y. Civil Court not to have jurisdiction –
No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer

> appointed under this Act or a Securities Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."
>
> (emphasis is ours)

A perusal of the above provisions reveals, that the functionaries under the SEBI Act, have been vested on some subjects, with the same powers, which are available to a Civil Court under the CPC. This necessarily leads to the inference, that other provisions of the CPC are per se, not applicable to the subjects not covered by the above provisions. Similarly, for the SAT, it has been specially provided, that the provisions of the CPC will be inapplicable to it, however, in its functioning it would be guided by the principles of natural justice. The above provision also vests in the SAT, some powers as are vested in a Civil Court. Obviously therefore, on the remaining subjects the provisions of the CPC would not be applicable. Since the provisions in the CPC relating to execution have not been made applicable for enforcement of orders passed under the SEBI Act, the conclusion has to be, that the same (including the provisions referred to by learned counsel), would not be applicable for the enforcement of orders passed under the SEBI Act. Furthermore, Section 15Y of the SEBI Act bars Civil Courts from entertaining any suit or proceeding, in respect of a controversy governed by the SEBI Act. It is, therefore apparent, that the provisions of the CPC are per se inapplicable to proceedings under the SEBI Act.

67. It is however important to notice, that the SEBI Act does not provide either to the SEBI or the SAT, power for execution of orders passed by either of them. Therefore, no such power could be exercised by the above fora for executing even the appellate order(s) passed by this Court under Section 15Z of the SEBI Act. It was when the legal position stood thus, that the question of execution of the orders dated 31.8.2012 and 5.12.2012 arose (during the pendency of Contempt Petition (Civil) nos. 412 and 413 of 2012 and Contempt Petition (Civil) no. 260 of 2013).

68. It is in the above background, that we shall first determine the submissions advanced by learned Senior Counsel, based on Section 51 of the CPC. First and foremost, the procedure contemplated under Section 51 of the CPC has not been adopted by the SEBI Act, either expressly or impliedly. Secondly, Section 51, deals with the power of a Civil Court to enforce execution of money-decrees rendered by a Civil Court. Herein, we are concerned with the execution of orders emanating from the provisions of the SEBI Act, and not out of orders in proceedings, initiated before a Civil Court. Insofar as the SEBI Act is concerned, as already noticed hereinabove, Section 15Y totally excludes the jurisdiction of Civil Courts, in respect of subjects governing investors' interest and the regulation of the securities market. There can, therefore be no doubt that Section 51 of the CPC is per se inapplicable to the controversy in hand.

69. There can however be no doubt, that even though the provisions of the CPC are inapplicable to proceedings under the SEBI Act (except when

expressly provided for), yet we all understand, that the provisions of the CPC have evolved as a matter of long years of experience emanating out of the common law of England. Even though the same may not be binding, insofar as the present controversy is concerned, yet if an order is passed keeping in mind the parameters laid down in the CPC, it would be sufficient to conclude that the rules of natural justice were fully complied with. We are of the view that the conditions contemplated in Section 51 of the CPC as preconditions, for the arrest and detention of a judgment-debtor for executing a Court's order, can be demonstrated as having been duly complied with, before this Court passed the impugned order dated 04.03.2014. The proviso to Section 51 of the CPC contemplates certain preconditions for execution of a money-decree by way of arrest and detention in prison. As already discussed above, on the satisfaction of any one of the preconditions, a money-decree can be executed, by ordering arrest and detention of the judgment-debtor in prison.

70. The first situation contemplated by the proviso to Section 51 of the CPC is, when the executing Court entertains the view, that the judgment-debtor is likely to abscond or leave the local jurisdiction of the Court, with the object of obstructing or delaying the execution of the decree. Insofar as the instant aspect of the matter is concerned, it is apparent that this Court actually entertained the view, that the petitioner was "likely" to abscond or leave the local limits of the jurisdiction of this Court, for obstructing or delaying the execution of the decree. It is, therefore, that

this Court by its order dated 28.10.2013 directed, that "… the alleged contemnors (respondents) shall not leave the country without the permission of this Court…". Even though the above order was subsequently relaxed by this Court on a request made by the petitioner, yet once again on 21.11.2013, this Court directed "… the alleged contemnors shall not leave the country without the permission of this Court.". The first of the postulated preconditions for ordering arrest and detention of a judgment-debtor, for the execution of the liability resting on the shoulders of the two companies, was therefore clearly made out, before the impugned order dated 4.3.2014 was passed.

71. Another alternative pre-condition contemplated in the proviso to Section 51 of the CPC is, when a judgment-debtor has the means to pay the amount of the decree (or some substantial part thereof), and yet refuses or neglects to pay the same. Insofar as the instant aspect of the matter is concerned, the two concerned companies could have easily paid the contemplated amounts, by selling their assets (in terms of their affidavit dated 4.1.2012). It is also relevant to mention, that in the affidavits filed by the two concerned companies before the SAT on 14.9.2011 (taken from Volume II of additional documents filed by the respondents in Contempt Petition (Civil) no. 412 of 2012), it was acknowledged on behalf of the two companies, that the book value/market value of their properties as on 30.8.2011 were as under:-

	Book Value (Rs. in Crores)	Market Value (Rs. in Crores)

i)	Investments	6,430	36,021
ii)	Cash/Current Assets etc.	15,937	20,297
SHICL			
i)	Investments	1,865	5,498
ii)	Cash/Current Assets etc.	6,027	7,682
	Total	30,259	69,498

The market value of the assets acknowledged by the two companies, would have undoubtedly appreciated further, from the figures depicted in 2011. During the course of hearing before this Court, on several occasions it was undertaken by the contemnors, that they would dispose of the unencumbered immovable properties owned by the Sahara Group, to comply with the orders dated 31.8.2012 and 5.12.2012. In this background it may also be mentioned, that the official website of Sahara India, indicates the net worth of the Sahara Group as Rs.68,174/- crores. According to the above website, the Sahara Group has a land bank of approximately 36,631 acres, and the market value of the Group assets/potential earning is to the tune of Rs.1,52,518 crores. It is also not a matter of dispute, that the Sahara Group owns premium hotels in London (the Grosvenor House) and in New York (the New York Plaza). The above hotels, according to the Sahara Group, are valued at over several thousand crores of rupees. Be that as it may, after the passing of the orders dated 31.8.2012 and 5.12.2012, no payment has been made by the two concerned companies. The last deposit of Rs.5120 crores was made on 5.12.2012. It is, therefore apparent, that inspite of their means to pay, the two companies have refused and neglected to pay the amount due in its entirety (or even a substantial part thereof). Another postulated pre-

condition for ordering the arrest and detention of a judgment-debtor, for the execution of a money-decree, was therefore clearly made out, before the impugned order dated 04.03.2014 was passed.

72. We are *prima facie* satisfied, that yet another pre-condition contemplated in the proviso to Section 51 of the CPC was also made out. The reason for expressing the instant view is, that no clear responses were ever given by the two companies. The position remained the same whether those answers were sought by the SEBI(FTM), or the SAT, or even by this Court. When SIRECL was required to disclose the manner in which it had made payments by way of redemption to the OFCD's holders, the following sources were disclosed:-

		Rupees (In Crores)
1.	Sahara Credit Co-operative Society Ltd.	13,366.18
2.	Sahara India Commercial Corporation Limited	4384.00
3.	Sahara Q Shop	2258.32
4.	Ketak City Homes Ltd.	19.43
5.	Kirit City Homes Ltd.	44.05

Likewise, when similar information about redemptions was sought from SHICL, the following sources were disclosed:-

		Rupees (In Crores)
1.	SICCL	2479.00
2.	Sahara Q Shop	2411.90

At the cost of repetition we may record, that when asked the manner in which the companies had forwarded the above mentioned payments to the

two companies, the response was, that the above amounts were never released, but were transferred to Sahara India (Firm), for disbursement. When details of the above transactions were sought, the Court was informed that the above transactions were made by way of cash, and the requirement of the Court to show banking transactions, was unfair. When asked how the two companies had collected the cash funds, which were paid to Sahara India (Firm), the response was, that the two companies which had collected the funds, had collected the same by way of cash. When asked how disbursements were made to the investors, the response was, that about 95% of the payments made to the investors, were also made by way of cash. To demonstrate the receipt and payment of the funds by way of cash, learned Senior Counsel representing the contemnors (including the petitioner herein), invited our attention to the books of accounts (only general ledger entries) to demonstrate proof of the transactions under reference. Details in this behalf have been recorded by us under the heading "A few words, about the defence of redemption of OFCD's, offered by the two companies". The above explanation may seem to be acceptable to the contemnors, but our view is quite the converse. It is not possible for us to accept, that the funds amounting to thousands of crores, were transacted by way of cash. We would, therefore, on the face of it, reject the above explanation tendered on behalf of the two companies. It is necessary to notice, that one of the preconditions contemplated under the proviso to Section 51 postulates, that if the judgment-debtor dishonestly transfers, conceals or removes any

part of his property, or commits any act of bad faith in relation to his property, the concerned executing Court can enforce a money-decree, by way of arrest and detention. Since a farcical explanation was tendered by the two companies in respect of receipt, payment and transfer of thousands of crores of rupees by way of cash, without reference to any banking transactions whatsoever, it was legitimate to infer dishonest transfers, as well as, bad faith, on behalf of the contemnors. Therefore, for yet another reason, it was open for this Court, to order arrest and detention of the contemnors (including the present petitioner), for enforcement of the directions issued by this Court on 31.8.2012 and 5.12.2012.

73. The three preceding paragraphs clearly demonstrate, that three different conditions contemplated in the proviso to Section 51 of the CPC, were satisfied, before we ordered the arrest and detention of the contemnors, for enforcement of the orders passed by this Court. Satisfaction of any one of the conditions, expressed in the foregoing three paragraphs, would have been sufficient to order the arrest and detention of the petitioner, under Section 51 of the CPC. Our instant determination should not be understood to mean, that Section 51 of the CPC is applicable to the facts and circumstances of this case. The instant determination should only be understood to mean, that the parameters laid down in Section 51 of the CPC, stood fully satisfied, before the arrest and detention order dated 4.3.2014 was passed.

74. For the same reasons as have been recorded in the foregoing paragraph, even rules 37 and 40 of Order XXI of the CPC, would be inapplicable for the execution of this Court's orders dated 31.8.2012 and 5.12.2012. Firstly, because the above provisions of the CPC, relating to execution, have not been made applicable for enforcement of orders passed under the SEBI Act. Secondly, a perusal of rule 37(1) of Order XXI of the CPC reveals, that where a Court is satisfied that the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court, the procedural requirements of the aforesaid rules is expressly excluded. Likewise, sub-rule (2) of rule 37 of Order XXI of the CPC provides, that the procedural requirements depicted therein, would be inapplicable when the judgment-debtor does not enter appearance before a Court in obedience of a notice issued to him. The impression of this Court, that the appellant would abscond, and the fact, that the appellant did not enter appearance when summoned to do so, is apparent from the orders passed by this Court (already extract above). Yet, at the cost of repetition, we may reiterate, that by an order dated 28.10.2013, this Court directed, that "…the alleged contemnors (respondents) shall not leave the country without the permission of this Court…". Even though the above order was relaxed by this Court on a request made by the petitioner, yet once again on 21.11.2013 this Court directed "… the alleged contemnors shall not leave the country without the permission of this Court.". The above restraint order was subsisting when the petitioner's order of arrest and detention was passed. Furthermore, having expressed its satisfaction,

that the information furnished by the contemnors (including the petitioner) did not establish the stance adopted by them, this Court by its order dated 20.2.2014 noticing the defiant and non-cooperative attitude of the contemnors, had directed "the personal presence of the alleged contemnors and the directors of the respondent companies in Court on February 26, 2014 at 2.00 pm…" On 25.2.2014, a mention was made on behalf of the petitioner herein, for exemption from personal presence on 26.2.2014. The same was declined. Despite the above refusal, Mr. Subrata Roy Sahara did not enter appearance before this Court on 26.2.2014. The other directors were present. Thus there is no room for any doubt, that the above provision was rendered inapplicable, insofar as the petitioner is concerned. A perusal of rule 40 of Order XXI of the CPC reveals, that the procedural requirements expressed in the same, would come into play *inter alia*, after the person concerned "… is brought before the Court after being arrested in execution of a decree for payment of money…". Reference to above rule, on behalf of the petitioner, is therefore wholly misconceived. The above deliberations, should not be understood to mean, that the aforesaid provisions of the CPC, relied upon by the learned counsel, were applicable to this case. The above deliberations only demonstrated, that the parameters laid down in the above provisions cannot be stated to have been disregarded, when the impugned order dated 4.3.2014 was passed.

75. Insofar as rule 6 of Order XIII of the Supreme Court Rules, 1966, is concerned, the same mandates the enforcement of an order passed by this Court, by transmitting the order to be enforced to the "Court or Tribunal in the way prescribed by law". We have already concluded hereinabove, that no executing mechanism was in place under the provisions of the SEBI Act, when the orders dated 31.8.2012 and 5.12.2012 were passed. Thus viewed, even rule 6 of Order XIII of the Supreme Court Rules, 1966 would be inapplicable to deal with the issue in hand, as it was not possible for this Court to transmit "… to the Court or Tribunal from which the appeal was brought ..." for execution of this Court's orders dated 31.8.2012 and 5.12.2012.

76. The orders dated 31.8.2012 and 5.12.2012, could therefore have only been executed by this Court, in exercise of the power conferred on it under Articles 129 and 142 of the Constitution of India. Passing an order under the above provisions was necessary to ensure the observance of due process of law, in the facts and circumstances of this case, and to maintain the majesty of law and the dignity of this Court. The impugned order dated 4.3.2014 was accordingly passed thereunder. The power of arrest and detention can be exercised, as and when this Court is satisfied, in the facts and circumstances with which this Court is confronted in a given case, that the above means should be adopted for the execution of its orders.

77. Irrespective of the submissions noticed hereinabove, Mr. Ram Jethmalani, learned Senior Counsel appearing on behalf of the petitioner, placed vehement reliance on the judgment rendered by this Court in Jolly George Varghese & Anr. v. Bank of Cochin, (1980) 2 SCC 360, so as to contend, that detention per se was impermissible for enforcement of a money decree. Reliance was placed on the following observations recorded in the above judgment:-

> "10. Equally meaningful is the import of Article 21 of the Constitution in the context of imprisonment for non-payment of debts. The high value of human dignity and the worth of the human person enshrined in Article 21, read with Articles 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence. Maneka Gandhi's case (1978) 1 SCC 248, as developed further in Sunil Batra v. Delhi Administration, (1978) 4 SCC 494, Sita Ram and Ors. v. State of U.P., (1979) 2 SCC 656, and Sunil Batra v. Delhi Administration (W.P. no. 1009 of 1979 decided on December 20, 1979), lays down the proposition. It is too obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling. To be poor, in this land of daridra narayana, is no crime and to recover debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from Article 11 of the Covenant. But this is precisely the interpretation we have put on the proviso to Section 51 C.P.C. and the lethal blow of Article 21 cannot strike down the provision, as now interpreted.
>
> 11. The words which hurt are "or has had since the date of the decree, the means to pay the amount of the decree". This implies, superficially read, that if at any time after the passing of an old decree the judgment-debtor had come by some resources and had not discharged the decree, he could be detained in prison even though at that later point of time he was found to be penniless. This is not a sound position apart from being inhuman going by the standards of Article 11 (of the Covenant) and Article 21 (of the Constitution). The simple default to discharge is not enough. There

must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasizes the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and straitened circumstances will play prominently. We would have, by this construction, sauced law with justice, harmonized Section 51 with the Covenant and the Constitution.

12. The question may squarely arise some day as to whether the proviso to Section 51 read with Order 21. Rule 37 is in excess of the Constitutional mandate in Article 21 and bad in part. In the present case since we are remitting the matter for reconsideration, the stage has not yet arisen for us to go into the vires, that is why we are desisting from that essay.

13. In the present case the debtors are in distress because of the blanket distraint of their properties. Whatever might have been their means once, that finding has become obsolete in view of later happenings. Sri Krishnamurthi Iyer for the respondent fairly agreed that the law being what we have stated, it is necessary to direct the executing court to re-adjudicate on the present means of the debtors vis-a-vis the present pressures of their indebtedness, or alternatively whether they have had the ability to pay but have improperly evaded or postponed doing so or otherwise dishonestly committed acts of bad faith respecting their assets. The court will take note of other honest and urgent pressures on their assets, since that is the exercise expected of the court under the proviso to Section 51. An earlier adjudication will bind if relevant circumstances have not materially changed."

(emphasis is ours)

We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the petitioner, based on the judgment rendered by this Court in Jolly George Verghese's case (supra). We are of the view, that the conclusions to which our attention has been invited, must be viewed with reference to the factual matrix, as also, the actual consideration which had resulted in the above determination. In the instant view of the matter, the factual matrix taken into consideration

emerges from the following narration in Jolly George Verghese's case (supra):-

> "1. This litigation has secured special leave from us because it involves a profound issue of constitutional and international law and offers a challenge to the nascent champions of human rights in India whose politicized pre-occupation has forsaken the civil debtor whose personal liberty is imperilled by the judicial process itself, thanks to Section 51 (Proviso) and Order 21, Rule 37, Civil Procedure Code. Here is an appeal by judgment-debtors- the appellants - whose personal freedom is in peril because a court warrant for arrest and detention in the civil prison is chasing them for non-payment of an amount due to a bank - the respondent, which has ripened into a decree and has not yet been discharged. Is such deprivation of liberty illegal?
>
> xxx xxx xxx xxx xxx
>
> 4. The facts. The judgment-debtors (appellants) suffered a decree against them in O.S. No. 57 of 1972 in a sum of Rs.2.5 lakhs, the respondent-bank being the decree-holder. There are two other money decrees against the appellants (in O.S. 92 of 1972 and 94 of 1974), the total sum payable by them being over Rs.7 lakhs. In execution of the decree in question (O.S. 57 of 1972) a warrant for arrest and detention in the civil prison was issued to the appellants under Section 51 and Order 21, Rule. 37 of the Civil Procedure Code on June 22, 1979. Earlier, there had been a similar warrant for arrest in execution of the same decree. Besides this process, the decree-holders had proceeded against the properties of the judgment-debtors and in consequence, all these immovable properties had been attached for the purpose of sale in discharge of the decree debts. It is averred that the execution court has also appointed a Receiver for the management of the properties under attachment. In short, the enjoyment or even the power to alienate the properties by the judgment-debtors has been forbidden by the court direction keeping them under attachment and appointing a Receiver to manage them. Nevertheless, the court has issued a warrant for arrest because, on an earlier occasion, a similar warrant had been already issued. The High Court, in a short order, has summarily dismissed the revision filed by the judgment-debtors against the order of arrest. We see no investigation having been made by the executing court regarding the current ability of the judgment-debtors to clear off the debts or their mala fide refusal, if any, to discharge the debts. The question is whether under such circumstances the personal freedom of the judgment-debtors can be held in ransom until repayment of the debt, and if Section 51 read

> with Order 21, Rule 37, C.P.C. does warrant such a step, whether the provision of law is constitutional, tested on the touchstone of fair procedure under Article 21 and in conformity with the inherent dignity of the human person in the light of Article 11 of the International Covenant on Civil and Political Rights. A modern Shylock is shackled by law's humane handcuffs.
>
> xxx xxx xxx xxx xxx
>
> 9. We concur with the Law Commission in its construction of Section 51 C.P.C. It follows that quondom affluence and current indigence without intervening dishonesty or bad faith in liquidating his liability can be consistent with Article 11 of the Covenant, because then no detention is permissible under Section 51, C.P.C."
>
> (emphasis is ours)

Having perused the judgment rendered by this Court in Jolly George Verghese's case (supra), we are of the view, that the conclusions recorded therein, have a pointed and definite reference to the ability of a judgment-debtor, to pay off his debt. The conclusion drawn in the above judgment, was with respect to a judgment-debtor, who was unable to pay off his debt. Accordingly it was felt, that an order of detention in prison should not be adopted, to effectuate the execution of the decree. While dealing with the preconditions expressed in the proviso to Section 51 of the CPC, we have already concluded, that the Sahara Group has enormous assets with a huge market and marketable value. It is also clear that after 5.12.2012, the two companies have not deposited a single paisa, in furtherance of the compliance of this Court's orders (dated 31.8.2012 and 5.12.2012). It is therefore clear, that despite the petitioner (and the other companies) having means to pay, they have unfairly and willfully failed to pay. It is, therefore also clear, that the petitioner in the present case is not similarly situated as the petitioner in Jolly George Verghese's case (supra).

Accordingly reliance placed by the learned counsel for the petitioner on the above judgment, is wholly misconceived.

VII. Whether the impugned order dated 4.3.2014, was passed in violation of the rules of natural justice?

78. While arguing on merits, the very first plea advanced on behalf of the petitioner was, that the order of detention dated 4.3.2014 was passed all of a sudden, without affording any opportunity to the petitioner. Dr. Rajeev Dhawan, learned Senior Counsel, who spearheaded submissions on the instant issue, informed this Court, that an order passed without affording an opportunity of hearing, by any authority whosoever (including this Court), would be constitutionally unacceptable, and therefore void. The order dated 4.3.2014, according to learned Senior Counsel, was passed without affording the petitioner any opportunity to know why, and also, without any effective opportunity to respond to, whatever was the basis of passing such order. The petitioner, according to learned counsel, is till date not aware of the reasons which had prompted this Court to pass the impugned order dated 4.3.2014. He apologized to us, while informing us, that he had no option but to be blunt. Referring to the impugned order, he reiterated, "Your Lordships have passed a draconian order". Learned Senior Counsel in the above context, asserted, that this Court had made a "…terrible terrible mistake…, which needed to be corrected…". In this behalf his submission was, that "…to err was human…" and his advice was, that "... it is imperative for you, to correct this blunder...". In

supporting the above contention advanced by Dr. Rajeev Dhawan, Mr. Ram Jethmalani, learned Senior Counsel, also representing the petitioner, submitted, that "… the whole Bar was shell-shocked…", when this Court out of the blue, directed the arrest of the petitioner, without affording him any opportunity to state his case. It was the contention of the learned Senior Counsel, that the order passed by this Court on 4.3.2014 was "… extremely disturbing…". It was submitted, that there was no hearing of the matter. Suddenly on the conclusion of the day's hearing on 4.3.2014, "… when there was still much to be said…", a judicial order was passed, to the detriment of the petitioner "… depriving him of his civil liberties…". The order, it was contended, "… was an absolute nullity…". Learned counsel advised the Court, "… humility was the greatest attribute of human resource…", and as such, "… you must have the courage to accept, that the order dated 4.3.2014 was a nullity in law..., and you should have the courage to recall your void order…". We were also advised, that the mandate expressed in Article 142 of the Constitution of India (under which provision, the order dated 4.3.2014, was passed), "… was to do justice according to law, and not by whim or caprice...". During the course of hearing, learned counsel for the petitioner, addressed a number of queries to the Bench. Has any person ever been committed to jail, without knowing what offence he had committed? The whole of the criminal law is codified, has anybody ever been incarcerated, except according to the procedure laid down in the Cr.P.C.? What offence, punishable under what provision of law, has the petitioner committed, that you have sent him to

jail? Can an order of arrest and detention be passed orally…, without there being any writing…, without there being any notice…, without any opportunity to reply to the same? "… You have done all this, and more…", we were told. What has been done by this Court on 4.3.2014, according to learned counsel, was a blunder which needed to be revised. Dr. Rajeev Dhawan then affirmed, confirmed and repeated what his colleague had submitted. He informed us, "… Mr. Ram Jethmalani is right… we all make mistakes...". He went on to state "… we tell very rarely, what we have had to tell this Bench, that it has gone terribly terribly wrong..." He, however, reminded us, that every extraordinary situation, has to be dealt with, in an equally extraordinary manner i.e., in exactly the manner he had done. By informing the Court upfront, that it had erred, and therefore, the mistake committed by it, needed to be corrected, Mr. Ram Jethmalani in the above context told the Court, "Acknowledgement of a mistake enhances the prestige of the Court. I hope your Lordships will acknowledge this mistake."

79. Seriously, we were taken aback by the ferocity with which, the above submissions were advanced. Had we been a part of the audience, we would have acclaimed the courage and the capacity of learned Senior Counsel, to be able to call a spade a spade. We would have felt, that their eminence was rightfully bestowed on them, and well deserved. That of course, would have been subject to the condition, that what was sought to be conveyed through erudite grandiloquence, was factually correct. The

question therefore that needs to be considered is, whether the above submissions made by the learned counsel for the petitioner, are based on a truthful foundation. If their assertions are correct, we would concede at the beginning, that their inferences would have to be accepted as correct.

80. Mr. Arvind Datar, learned Senior Counsel appearing for the SEBI would contend, that there was nothing farther from the truth, in what had been submitted on behalf of the petitioner. We were taken through piles of pleadings, paper work, and orders passed by this Court, to demonstrate an express written notice to the petitioner, his written response, numerous opportunities of hearing afforded to learned Senior Counsel representing him, and finally, even an opportunity of personal oral hearing to the petitioner - Mr. Subrata Roy Sahara, himself.

81. Before examining the veracity of the submissions advanced by the learned Senior Counsel for the petitioner, we would unhesitatingly concede, that they were correct on one aspect of the matter. That it was an extraordinary situation. For many many years now, ever since we moved from the Bar to the Bench, we were the ones who were posing the questions, and the warring factions projecting their conflicting claims before us, were obliged to respond. Now for once, questions were being posed by a litigant asking the Court, for its response. Not that we find anything wrong with that, only that we too were shell-shocked, that we had committed a blunder, as to be informed by learned counsel, that we had passed a void order, that needed to be corrected. We would like to

acknowledge, that all this was possible because of the legal acumen possessed by learned Senior Counsel. If what was stated was correct, no Court would have any hesitation to correct such an error. The Court was an unconnected disinterested party. The Court would neither gain nor loose, if the contentions advanced by the petitioner, were to be accepted. In such an eventuality, by rendering the correction, the purpose of law would be served, justice would be done. We would never ever, refrain from rising to such an occasion. But if the factual position on the basis whereof the assertions were made, was found to be incorrect, learned Senior Counsel would most definitely have committed a terrible professional mistake. We say so, because Mr. Ram Jethmalani and Dr. Rajeev Dhawan, learned Senior Counsel, attended each date of hearing, of the proceedings in Contempt Petition (Civil) nos. 412 and 413 of 2012 and Contempt Petition (Civil) no. 260 of 2013, and were personally aware of the day to day happenings.

82. Now the merits of the contention. Interlocutory Application nos. 68 and 69 of 2013 in Civil Appeal no. 9813 of 2011 were filed by the SEBI. The prayers made therein *inter alia*, read as under:-

> "(d) pass an order permitting SEBI [WTM] to take measures for arrest and detention in civil prison of promoter of Saharas Shri Subrata Roy Sahara and the two male directors, viz., Shri Ashok Roy Choudhary and Shri Ravi Shankar Dubey after giving reasonable opportunity of hearing.
>
> (f) pass an order directing the promoter of SIRECL and SHICL Shri Subrata Roy Sahara and their Directors, viz., Shri Ashok Roy Choudhary, Shri Ravi Shankar Dubey and Ms. Vandana Bhargava to deposit forthwith their respective passport with the Secretary General of this Hon'ble Court and not to leave

> the country without the prior permission of this Hon'ble Court; and
>
> (g) pass such other and/or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."
>
> (emphasis is ours)

In view of the above prayers made in Interlocutory Application nos. 68 and 69 of 2013, wherein notice was issued to the petitioner, can it be said, that the petitioner had no notice? Can it not be said, that there was a pending Interlocutory Application expressly, seeking his arrest and detention? We are fully satisfied, that the petitioner – Mr. Subrata Roy Sahara had due notice, as also, that he was fully alive to the basis and reasons, why his arrest and detention (along with the directors of the two companies) was being sought.

83. The said Interlocutory Application nos. 68 and 69 of 2013 were taken up for consideration on 22.4.2013. Mr. Gaurav Kejriwal, Mr. U.U. Lalit, and Mr. C.A. Sundaram, learned Senior Counsel appearing for the contemnors undertook to file their response to the above applications, within one week. Accordingly, liberty was granted to Mr. Subrata Roy Sahara (and the other contemnors) to file their reply affidavits by 29.4.2013. The petitioner herein - Mr. Subrata Roy Sahara, actually filed his personal counter affidavit dated 8.5.2013 in reply to Interlocutory Application nos. 68 and 69 of 2013. He asserted in paragraph 2 of his affidavit as under:-

> "… while so seeking relief for arrest and detention in a civil prison, depositing of passport etc., would not be warranted in fact or in law. I submit that such reliefs are granted in extreme cases of execution

> of decree only when it is established that a judgment-debtor having the means to pay, is willfully and intentionally not paying the amount…"
>
> (emphasis is ours)

In paragraph 4 of the counter affidavit filed by the petitioner – Mr. Subrata Roy Sahara, to Interlocutory Application nos. 68 and 69 of 2013, it was submitted:-

> "Without prejudice to the aforesaid, I further submit that, there would be no warrant or justification for SEBI to seek reliefs as they have prayed for. In the first place, all my assets have already been attached by SEBI and particulars of which are given to SEBI in compliance of its order. It is neither allegation of SEBI that I have secreted away any assets, nor any part of moneys received by SIRECL/SHICL from the investors has been diverted to me. Whilst so there is no case made out by SEBI, for the orders as sought by SEBI. Apart from the aforesaid, I also submit that I am businessman, holding Indian passport residing in India and most of my assets and businesses are in India. My entire family and home, is also in India. While so there cannot be any apprehension, leave alone reasonable apprehension/ground requiring my detention or restrain on any travel as sought for. In absence of any such reasonable apprehension, I submit that the application is not bona fide and warranted in any manner whatsoever.".
>
> (emphasis is ours)

His above affidavit ended with a prayer, that the relief sought by SEBI ought not to be granted. In view of the above personal counter-affidavit filed by the petitioner, is it not abundantly clear, that the petitioner was conscious of the implications of the prayer made in Interlocutory Application nos. 68 and 69 of 2013? We are also satisfied, that he was also fully conscious, of the provisions under which the prayer made had to be examined, and therefore, relied upon the various technicalities of law, in his defence. He also placed, certain personal factors on record in his defence. In other words, not only was he aware of the reasons, why his arrest and detention was sought, but he had availed of the opportunity to

respond to the same in writing. We are fully satisfied, that the petitioner – Mr. Subrata Roy Sahara had a notice depicting the reasons why his arrest and detention was sought, and an opportunity to carefully respond to the same, by stating his defence in writing.

84. The matter was thereafter posted for hearing on 2.5.2013. Having found, that the petitioner - Mr. Subrata Roy Sahara (and the other contemnors) were engaging themselves in unnecessary litigation arising out of our order dated 31.8.2012, the following interim order came to be passed on 2.5.2013:-

> "We are inclined to stay all further proceedings in Appeal Nos. 42/2013 (Subrata Roy Sahara v. SEBI), 48/2013 (SHICL v. SEBI), 49/2013 (SIRECL v. SEBI) and 50/2013 (Ashok Roy Chaudhary & Ors. v. SEBI) pending before the Securities Appellate Tribunal, Mumbai, and in Writ Petition No. 2088/2013 pending before the High Court of Judicature at Allahabad, Lucknow Bench, since we are examining the question, whether the respondents have complied with the various conditions stipulated in our judgment dated 31st August, 2012."

85. Interlocutory Application nos. 68 and 69 of 2013 continued to be listed on each date of hearing thereafter, i.e., on 2.5.2013, 8.5.2013 and 17.7.2013. To ensure, that the issue of compliance of the orders passed by us on 31.8.2012, would be listed only before this Court, we passed, *inter alia*, the following order on 17.7.2013:-

> "We call for the Appeals Nos.42/2013 (titled Subrata Roy Sahara v. SEBI), 48/2013 (titled SHICL v. SEBI), 49/2013 (titled SIRECL v. SEBI) and 50/2013 (titled Ashok Roy Chaudhary & Ors., SEBI) pending before the Securities Appellate Tribunal Mumbai and W.P. No.2088 of 2013 (titled Sahara India Lucknow & Anr., v. SEBI) pending before the High Court of Judicature at Allahabad, which shall stand transferred to this Court.

> We make it clear that no High Court, Securities Appellate Tribunal and any other Forum shall pass any orders against the orders passed by Securities and Exchange Board of India (SEBI) in implementation of this Court's judgment dated 31.08.2012."

The above order was considered essential because it seemed to us, that the petitioner was unnecessarily opening and extending the litigation pertaining to the execution of order dated 31.8.2012, to other Fora including the High Court.

86. The matter was then taken up for hearing on various dates including 24.7.2013, 30.7.2013, 6.8.2013, 13.8.2013, 26.8.2013, 2.9.2013, 16.9.2013, 4.10.2013 and 28.10.2013. On all the above dates, Interlocutory Application nos. 68 and 69 of 2013, were actually posted for hearing. By now, enough time had been afforded to the petitioner to solicit compliance of the orders passed by this Court. Rather than actual compliance by making financial deposits, an alternative route was sought to be treaded by Mr. C.A. Sundram, learned Senior Counsel. Learned Senior Counsel informed us, that the contemnors were willing to make available to the SEBI, the details of unencumbered properties worth Rs.20,000/- crores. It was apparent, that the implied purpose to make available the above properties was, to guarantee the payment ordered by this Court on 31.8.2012 and 5.12.2012. Noticing the above factual position, this Court passed the following order:-

> "Mr. C.A. Sundaram, learned Senior Counsel appearing for respondent No.5 (alleged contemnor), brought to our notice letter dated October 17, 2013 received from the Managing Director and CEO of the PNB Investment Services Limited. The same is taken on record and is marked as 'Annexure-A'.

> Mr. Sundaram, on the basis of the said letter and on instructions received from the Sahara Group of Companies, submitted that the alleged contemnors are willing to make available to SEBI the original title deeds of unencumbered properties, worth `20,000 crores, along with proper valuation reports, within a period of three weeks from today. SEBI, in turn, will examine the same and make their response, which shall be considered by this Court on the next date of hearing.
>
> Till the above direction is complied with to the satisfaction of SEBI, the alleged contemnors (respondents) shall not leave the country without the permission of this Court."
>
> (emphasis is ours)

It is in furtherance of the prayer (f) made in Interlocutory Application nos. 68 and 69 of 2013, that the above order came to be passed on 28.10.2013, restraining the petitioner (and the other contemnors) from leaving the country, without this Court's permission. This Court through its above order, issued its first disciplinary order. We had hoped, that the above order would convey to the contemnors, the seriousness of the matter.

87. The matter was then taken up on 31.10.2013 and 1.11.2013. Having considered the submissions advanced on behalf of the petitioner - Mr. Subrata Roy Sahara in Interlocutory Application no. 4 (in Contempt Petition (Civil) no. 260 of 2013 in Civil Appeal no. 8643 of 2012), that he needed to go abroad urgently, in connection with some business commitments, we permitted him the liberty to leave the country, with a clear direction, that he would return back before the expiry of the period of three weeks, if the directions issued by us in the order dated 28.10.2013

were not complied with. An extract of the above order dated 1.11.2013 is being reproduced hereunder:-

> "For the reasons indicated in para 4 of the application, we make it clear that it is open for the alleged contemnor No.5 in Contempt Petition (Civil) Nos. 412 and 413 of 2012 to go abroad, but, in the event of non-compliance of the directions contained in the order dated October 28, 2013, he shall immediately return back and be present in the country before the expiry of the period of three weeks, as indicated in the said order."
>
> (emphasis is ours)

It is therefore apparent, that this Court did not wish any harm to the petitioner. The requests made by him were duly considered, and appropriate orders were passed, to ensure that his business ventures would not be adversely affected.

88. The matter was taken up for hearing thereafter, on 20.11.2013 and 21.11.2013. On 21.11.2013, finding the conduct of the petitioner and the other contemnors unacceptable, and in complete disregard with the order passed by us on 28.10.2013, we issued further directions on 21.11.2013 restraining the Sahara Group of Companies, from parting with any movable or immovable properties, until further orders. We further directed, that all the alleged contemnors would not leave the country, without the prior permission of this Court. In this behalf it would be relevant to mention, that the above order came to be passed because, the Court felt that an attempt had been made to mislead the Court, by submitting a false evaluation report. In this behalf we may record, that learned Senior Counsel representing the SEBI had invited our attention to an order passed by the Bombay High Court, depicting that the main properties

offered by the alleged contemnors, in compliance with the order dated 28.10.2013, fell in the CRZ Zone, where no construction whatsoever was permissible. An extract of the order dated 21.11.2013 is reproduced hereunder:-

> "We are convinced that the order dated 28.10.2013 passed by this Court has not been complied with in its letter and spirit. In such circumstances, we direct that the Sahara Group of Companies shall not part with any movable or immovable properties until further orders. We further direct that all the alleged contemnors shall not leave the country without the permission of this Court."
>
> (emphasis is ours)

This was another order, in the series of corrective and deterrent orders passed by this Court, in the process of enforcement of our orders dated 31.8.2012 and 5.12.2012. This Court through its above order, restrained the entire Sahara Group of Companies, from transferring any of their movable or immovable properties. Needless to mention, that the above order was also clearly passed in furtherance of the prayer made in Interlocutory Application nos. 68 and 69 of 2013, which was actually listed on the above date of hearing. This was another order in the series of orders passed by this Court, which would have certainly made the petitioner aware, that sequentially harsher orders were being passed by this Court, in the light of the prayers made in the aforesaid Interlocutory Applications.

89. The matter was then listed for hearing on 11.12.2013, 17.12.2013, 2.1.2014 and 9.1.2014. On all the above dates, Interlocutory Application nos. 68 and 69 of 2013 were also listed for hearing. On 9.1.2014, this Court passed the following order:-

> "Heard counsel on either side.
>
> Mr. C.A. Sundaram, learned Senior Counsel appearing for one of the alleged contemnors, submitted that earlier this Court on December 11, 2013 has only reiterated the submission made by Mr. Arvind Datar, learned Senior Counsel appearing for SEBI, that they did not disclose the source from which they got money for repayment, despite SEBI's letter dated May 28, 2013.
>
> Mr. Sundaram is right in his submission. However, we feel that it would be appropriate to give a direction of the nature stated above.
>
> Accordingly, we direct the alleged contemnors to disclose the complete details and source from which they repaid the amount to the investors as also the manner of making payments. They shall also disclose the information which SEBI has sought from them from time to time. Such information shall be provided to SEBI and also be filed in this Court by January 23, 2014.
>
> Put up on January 28, 2014 at 2.00 p.m.
>
> In the meantime, SEBI shall verify the information provided to it by the alleged contemnors."

It is imperative for us to give the background explaining why the order extracted hereinabove came to be passed. In this behalf it is relevant to mention, that Mr. Arvind Datar, learned Senior Counsel appearing for the SEBI, had informed this Court, that the contemnors including the petitioner herein, had been asserting that they had refunded Rs.17,443 crores (approximately) in the case of SIRECL and Rs.5,442 crores (approximately) in the case of SHICL, but had not given any details, nor produced any relevant record to show the source from which the two companies had collected the money, for such huge repayments. This information, according to Mr. Datar, had been sought by the SEBI from the alleged contemnors through a letter dated 28.5.2013 (i.e., more than six months prior to the passing of the above order). We were of the view, that

mentioning the aforesaid factual position was sufficient to prompt the two companies to furnish the abovesaid details. The demeanour of the two companies has remained the same, throughout. They have never supplied any investor related information. Not even such information, which would have substantiated their own defence. It is this repeated behaviour, that has given us the repeated impression, that the submissions advanced on behalf of the two companies, were just a pack of lies. The fact that the companies had not furnished the above details, was brought to our notice by Mr. Datar on 9.1.2014, prompting us to pass an express order directing the two companies, as also, the alleged contemnors including the present petitioner – Mr. Subrata Roy Sahara, to furnish the required particulars. The above order discloses the games the two companies, and the alleged contemnors, have been playing with this Court.

90. Thereafter the matter was taken up for consideration on 28.1.2014, when we passed the following order:-

> ""Heard Mr. Ram Jethmalani, learned Senior Counsel and Mr. Arvind P. Datar, learned Senior Counsel.
>
> Mr. Datar submitted that the Saharas have not disclosed the details as to when the refund was made. Reference was made to pages 6 to 9 of the reply affidavit filed today.
>
> Mr. Datar further submitted that the SEBI requires an explanation from Saharas with regard to the payments made on behalf of Sahara India Real Estate Corporation Ltd. (SIRECL) (partnership firm) by the following firms, as mentioned below:-

		Rupees (In Crores)
1.	Sahara Credit Co-operative Society Ltd.	13,366.18
2.	Sahara India Commercial Corporation	4384.00

	Limited	
3.	Sahara Q Shop	2258.32
4.	Ketak City Homes Ltd.	19.43
5.	Kirit City Homes Ltd.	44.05

Similarly, SEBI requires Saharas to show the following payments made on behalf of Sahara Housing Investment Corporation Ltd. (SHICL) (partnership firm), by the following firms, as mentioned below:-

		Rupees (In Crores)
1.	SICCL	2479.00
2.	Sahara Q Shop	2411.90

Further, the Saharas will also provide the bank statements of the above firms showing when the amount was paid to the partnership firms and subsequently when and how partnership firm made the disbursement, as sought for by the SEBI.

Mr. Ram Jethmalani, learned Senior Counsel appearing for the respondents submitted that he will examine the same and come out with a response within a week."

(emphasis is ours)

The above order is self-explanatory. The two companies, as also, the contemnors including the present petitioner, were obviously not providing the required bank statements, even though in Appeal no. 49 of 2013 filed by SIRECL before the SAT, it had committed to furnish bank accounts of Sahara India to establish redemption of payments. The relevant paragraph containing the assertions made therein is being extracted hereunder:-

"(ee) The Appellant has invested the funds of OFCD as per the details mentioned in the Affidavit dated 04.01.2012 of Shri B.M. Tripathi filed before the Hon'ble Supreme Court in Civil Appeal No. 9833 of 2011 which is already on the record of the Hon'ble Supreme Court. Further, it is submitted that in order to make redemptions to the OFCD holders, the Appellant had to dispose of the investments. Amounts realized on such disposal were utilized to pay the investors, on redemption through Sahara India-Partnership Firm to make the redemptions. The redemptions made to investors

> are clearly reflected and found in the Books of Accounts of Sahara India. The Appellant crave leave to refer to and rely upon bank accounts of Sahara India as and when produced."
>
> (emphasis is ours)

In a similar Appeal no. 48 of 2013, filed by SHICL before the SAT, exactly the same stance (as adopted by SIRECL, and extracted above), was taken. Even though the position adopted by the two companies was, that verification of redemption of OFCD's could be established from bank accounts of Sahara India Limited, the said bank accounts depicting the said transactions were not being disclosed. A perusal of the above order dated 28.1.2014 reveals, that Mr. Ram Jethmalani, learned Senior Counsel sought time to examine the matter, so as to be able to come out, with an appropriate response. On 20.2.2014, conflicting stands were taken by learned counsel appearing for the alleged contemnors (including the present petitioner). One learned counsel, went to the extent of contending, that the position adopted by the two companies in the two appeals, was the result of a typographical error. All along, most ridiculous and absurd defences were raised. Our impression is, that this was done to avoid furnishing of the information sought. Maybe there was no information to supply.

91. This Court was also convinced, that the attitude of the alleged contemnors was defiant and non-cooperative, insofar as the implementation of its orders dated 31.8.2012 and 5.12.2012 was concerned. Accordingly the personal presence of the alleged contemnors was ordered. This was yet another order, in the line of orders passed by

us, this time sterner than the previous ones. Yet again, aimed at cajoling compliance of the orders dated 31.8.2012 and 5.12.2012. On all the earlier dates of hearing, as also on 20.2.2014, Interlocutory Application nos. 68 and 69 of 2013 were posted for hearing. It was evident, that the order dated 20.2.2014 was passed by this Court, in furtherance of the prayers made in the above Interlocutory Applications. A relevant portion thereof is reproduced hereunder:-

> "Heard Mr. Ram Jethmalani and Mr. C.A. Sundaram, learned Senior Counsel appearing for the alleged contemnors and Mr. Arvind P. Datar, learned Senior Counsel appearing for SEBI.
>
> In view of the conflicting stands taken by the Senior Counsel appearing for the alleged contemnors and the defiant and non-cooperative attitude adopted by the contemnors in honouring the judgment dated August 31, 2012, passed by this Court as well as orders dated December 05, 2012 and February 25, 2013 passed in Civil Appeal No. 8643 of 2012 and IA No. 67 of 2013 by a three Judge Bench of this Court, we direct the personal presence of the alleged contemnors and the Directors of the respondent companies in Court on February 26, 2014 at 2.00 p.m., on which date the matter will be next taken up."
>
> (emphasis is ours)

A perusal of the above order reveals, that the contemnors were to appear personally before this Court on 26.2.2014. Most importantly, it also reveals why the petitioner was being summoned to this Court. We are also satisfied, that the petitioner was fully conscious, of the reason why he was being summoned to Court, anyway his personal presence was directed (along with the other contemnors). It therefore does not lie in the mouth of the petitioner – Mr. Subrata Roy Sahara, or his learned counsel, that they were not aware why the above summoning order was passed.

92. On 25.2.2014, an oral request was made by Mr. Ram Jethmalani, learned Senior Counsel. He prayed for exemption, of the petitioner's personal presence. The above oral request was specifically turned down. When the matter was taken up on 26.2.2014, whilst the other alleged contemnors were present in Court, Mr. Subrata Roy Sahara, the petitioner herein, did not enter appearance. This Court passed the following order on 26.2.2014, to enforce the presence of the petitioner Mr. Subrata Roy Sahara on the next date of hearing, i.e., on 4.3.2014:-

> "This Court passed an order on February 20, 2014 directing the personal presence of the alleged contemnors and the Directors of the respondent companies today, i.e. on February 26, 2014 at 2.00 p.m. On our directions, Mr. Ashok Roy Choudhary, Mr. Ravi Shankar Dubey and Smt. Vandana Bhargava are present in Court today.
>
> Even though, Mr. Ram Jethmalani, learned Senior Counsel appearing for the alleged contemnors, made a mention yesterday, i.e. on February 25, 2014, before this Bench for dispensing with the personal presence of Mr. Subrata Roy Sahara, alleged contemnor No.5, that request was specifically turned down by this Court.
>
> Today, when the matter is taken up, same request was made by Mr. Jethmalani, by moving an application, which was supported by a medical certificate. The said medical certificate was issued by Sahara Hospital and, in our view, the factual position indicated therein does not solicit the exemption sought.
>
> Since, we have already declined to grant exemption from personal presence of alleged contemnor No.5 on February 25, 2014, we find no reason to accede to the renewal of the request made today.
>
> Accordingly, we issue non-bailable warrants of arrest qua Mr. Subrata Roy Sahara, alleged contemnor No.5. He shall be arrested and produced before this Court on March 04, 2014 at 2.00 p.m.
>
> The afore-mentioned Directors, who are present today, shall also remain present in Court on the next date.
>
> Put up on March 04, 2014 at 2.00 p.m."
>
> (emphasis is ours)

On 4.3.2014, all the contemnors were present. Not only were learned counsel appearing for the petitioner permitted to address arguments, we afforded an opportunity of hearing to each of the directors present in Court, as also, Mr. Subrata Roy Sahara. In the facts and circumstances of the controversy it needs to be noticed, that Mr. Subrata Roy Sahara was repeatedly heard on 4.3.2014, as and when he desired to express his view, till he had nothing further to state.

93. It is thereupon that the impugned order dated 4.3.2014 extracted at the beginning of this order, was passed.

94. Based on the factual position noticed in the foregoing paragraphs, it was the vehement contention of Mr. Arvind Datar, learned Senior Counsel appearing for the SEBI, that the entire basis of the submissions canvassed on behalf of the petitioner was fallacious. It was submitted, that a written prayer was made in Interlocutory Application nos. 68 and 69 of 2013, *inter alia* praying for the arrest of the petitioner herein – Mr. Subrata Roy Sahara, and also, that of two other male directors of the companies, namely, Mr. Ashok Roy Choudhary and Mr. Ravi Shankar Dubey. The impugned order dated 4.3.2014, was exactly to the above effect. In consonance with the prayer made by the SEBI, the impugned order dated 4.3.2014 directed the arrest and detention of Mr. Subrata Roy Sahara, Mr. Ashok Roy Choudhary and Mr. Ravi Shankar Dubey. We did not traverse beyond the prayers made in the Interlocutory Applications. We did not order the arrest and detention of another contemnor Smt. Vandana

Bhargava, because no prayer for her arrest had been made, and also because of the reasons expressed in the order dated 4.3.2014. There could therefore be no reason to doubt, that the order dated 4.3.2014 had been passed in furtherance of express prayers made to this Court, in Interlocutory Application nos. 68 and 69 of 2013.

95. We find each one of the submissions advanced by Mr. Arvind Datar on behalf of the SEBI, as fully justified. We have recorded our own observations, at the end of each of the above paragraphs, dealing with the factual position brought to our notice, by the learned Senior Counsel for the SEBI. We are satisfied, that Mr. Subrata Roy Sahara was well aware of the proceedings before this Court. He was well aware of the prayers made in Interlocutory Application nos. 68 and 69 of 2013. He filed his written response thereto, by way of an affidavit. The petitioner was aware of the seriousness of the issue, on account of various restraining, corrective and deterrent orders passed by this Court, from time to time, each graver than the previous ones. He remained unaffected to all the efforts made by this Court, to enforce refund of the moneys collected by the two companies, to those who had invested in their OFCD's, along with interest, in terms of this Court's orders dated 31.8.2012 and 5.12.2012. It is, therefore, that this Court was left with no other option, but to order the arrest and detention of two of the directors, and Mr. Subrata Roy Sahara. We were satisfied, that the above order was necessary to ensure the observance of the due process of law, in the facts and circumstances of

the case. The above order was also imperative, if we were to perform our duties and functions effectively, and if we were to maintain the majesty of law and/or the dignity of the Supreme Court.

96. It is not possible for us to accept, that while passing the above order, no opportunity was afforded to the petitioner - Mr. Subrata Roy Sahara. Indeed every response made by the alleged contemnors, was taken into consideration on each occasion. The alleged contemnors were found to be playing tricks with this Court. Not only were learned counsel representing the alleged contemnors heard from time to time, personal hearing was also afforded to the directors and Mr. Subrata Roy Sahara, the petitioner herein on 4.3.2014. In fact, Mr. Subrata Roy Sahara, the petitioner herein, was heard repeatedly to his heart's content, before the order dated 4.3.2014 was passed. For the reasons recorded hereinabove, it is not possible for us to accept the contention advanced at the hands of the learned counsel for the petitioner, that the order dated 4.3.2014 was passed without following the rules of natural justice, or that, the above order violates any of the petitioner's fundamental rights.

VIII. Whether the impugned order dated 4.3.2014, is vitiated on account of bias?

97. To be fair to Mr. Ram Jethmalani and Dr. Rajeev Dhawan, learned Senior Counsel representing the petitioner, it is essential to indicate, that one of the reasons expressed by them, for us not to hear this matter was, that we entertained a bias against the petitioner. The pointed contention

was, that the deliberations conducted by us, had generated a reasonable apprehension in the mind of the petitioner, that we had already arrived at a final resolve, and that, we would not be satisfied under any circumstances, with the petitioner's arguments and submissions on merits. It was, therefore submitted, that the merits of the controversy would not make any difference to this Bench, since the Bench had already pre-judged the matter, and that, no relief could be expected by the petitioner from us.

98. In order to support his above submission, learned Senior Counsel for the petitioner argued, that the petitioner had been confined to Tihar Jail, since 4.3.2014, without any justification. It was submitted, that the incarceration of the petitioner was void, and with the march of events, during the course of hearing of the instant petition, it had further become clear to the petitioner, that it was likely that the petitioner would continue to remain in custody for an indefinite period. In this behalf it was submitted, that it was the petitioner's impression that the Judges hearing the matter, wished to enforce the orders dated 31.8.2012 and 5.12.2012, at all costs. It was submitted, that the above orders had been substantially complied with, yet without following the rules of natural justice, the petitioner has been accused of not complying with the orders of this Court. It was submitted, that the petitioner's incarceration vide order dated 4.3.2014 was a complete nullity, and it was the duty of this Court, to terminate his unlawful detention, and to order his release forthwith.

99. It was the pointed submission of the learned counsel for the petitioner, that during the course of hearing (of Contempt Petition (Civil) nos. 412 and 413 of 2012 and Contempt Petition (Civil) no.260 of 2013), in order to determine whether or not the respondents therein (including the present petitioner) were actually guilty of contempt, one of the Judges hearing the matter (J.S. Khehar, J.), had presumably in agreement with the other Judge on the Bench (K.S. Radhakrishnan, J.) informed learned counsel, that the issue as to whether the respondents in the above petitions, had committed contempt or not, would only be considered after the Court's satisfaction, that the orders dated 31.8.2012 and 5.12.2012 had been complied with. It was the submission of the learned Senior Counsel for the petitioner, that when the petitioner's detention was ordered on 4.3.2014, neither the petitioner nor his counsel understood the purpose for which the petitioner, as promoter of the two companies, and the other directors of the two companies, had been summoned to this Court. Besides the above stated factual submission, it was also the contention of the learned Senior Counsel for the petitioner, that the petitioner is still unaware, of the reasons for which his detention has been ordered.

100. It was submitted, that under the stress created by the order passed by this Court on 4.3.2014, by which the petitioner's liberty had been taken away, the petitioner has made repeated efforts to suggest a possible settlement, yet all efforts made by the petitioner were rejected. The petitioner's proposals were construed, according to learned counsel, as an

insult to the Court. It was submitted, that all these events, had generated a reasonable apprehension in the mind of the petitioner, that this Court had already arrived at a final decision. In order to support the instant submission, learned counsel for the petitioner invited this Court's attention to something which had completely shocked the petitioner, and had made him incapable to expecting a just decision at the hands of the Judges hearing the matter. In this behalf it was pointed out, that in the impugned order a finding had been recorded, that "… all the fact finding authorities had opined that a majority of the investors did not exist…" It was submitted, that the identity of the authorities which had arrived at the above conclusion, had not been disclosed, by this Court. It was pointed out, that no such mention had been made in the affidavit filed by the SEBI, and no such submission was advanced, during the course of hearing. It was therefore, the contention of the learned counsel for the petitioner, that the petitioner was of the firm belief, that in view of our pre-disposition, legitimate verification of the documents furnished by the two companies to the SEBI, cannot be expected. It was submitted, that the situation created by this Court was such, that the petitioner is in no position, even to make an effort to find a compromise solution to the problem. It was also the assertion of the learned counsel for the petitioner, that the impugned order recited, that the respondents/contemnors (including the petitioner herein) were heard, whereas, the respondents were called upon when only a few minutes were left for this Court to rise on 4.3.2014. While acknowledging, that all the four respondents (including the present petitioner) were

individually asked, as to whether they had anything to say, they were not informed what they were asked to respond to. Accordingly, all the respondents who had appeared before this Court on 4.3.2014, were fully justified in stating to this Court on 4.3.2014, that their response was the same as had been submitted to this Court, on their behalf, by their respective learned Senior Counsel. It was accordingly sought to be suggested, that only an illusory hearing, in total defiance of the rules of natural justice, was afforded to the petitioner, and the other contemnors/respondents. Based on the above premise, it was the submission of the learned Senior Counsel for the petitioner, that on account of the lack of confidence of the petitioner, in this Bench, it would be improper for this Bench to hear the present case on its merit, and to render judgment thereon.

101. In order to support his above contention, and to bring forth the principles enunciated by this Court, which were relevant to the present case, Mr. Ram Jethmalani, learned Senior Counsel, placed reliance on Manak Lal v. Dr. Prem Chand, (1957), SCR 575. Inviting the Court's attention to the factual background of the controversy in the above case, it was brought out, that Dr. Prem Chand, the respondent, had filed a complaint against Manak Lal, the petitioner, under the Bar Councils Act. During the course of adjudication, both the Members of the Tribunal (under the Bar Councils Act) and the Judges of the High Court of Rajasthan, accepted the complainant's version, and rejected the pleas raised by

Manak Lal. Resultantly, Manak Lal was held guilty of gross professional misconduct. It was the above finding, which was assailed by Manak Lal before this Court. The contention advanced on his behalf was, that the Members of the Tribunal, nominated to enquire into the misconduct of Manak Lal, had been improperly nominated. The improper constitution of the Tribunal was premised on the fact, that Shri Chhangani who was the Chairman of the Tribunal, had previously filed a power of attorney on behalf of Dr. Prem Chand, in a matter being determined under Section 145 of the Cr.P.C. It was submitted that Shri Chhangani, had also argued the above matter, on behalf of Dr. Prem Chand on 23.8.1952. Having appeared for the opponent, it was submitted, that Shri Chhangani was disqualified from acting as Chairman/Member of the Tribunal. This Court in the above factual background, held as under:-

> "There is some force in this argument. It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a, litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it, is often said that justice must not only be done but must also appear to be done."
>
> (emphasis is ours)

On the issue, that justice must not only be done, but must also appear to be done, this Court in the above judgment, had relied on the judgment rendered in Frome United Breweries Co. v. Bath Justices, (1926) AC 586, and thereupon, had observed as under:-

> "As Viscount Cave L. C. has observed in From United Brewerses Co. v. Bath Justices, "this rule has been asserted not only in the case of Courts of Justices and other judicial tribunals but in the case of authorities which, though in no sense to be called Courts, have to act as judges of the rights of others ". In dealing with cases of bias attributed to members constituting tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is obvious that pecuniary interest, however small it may be in a subject-matter of the proceedings, would wholly disqualify a member from acting as a judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant, or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. " The principle says Halsbury, "*nemo debet esse judex in causaproprta sua* precludes a justice, who is interested in the subject matter of a dispute, from acting as a justice therein" (Halsbury's Laws of England, Vol. XXI, page 535, para 952). In our opinion, there is and can be no doubt about the validity of this principle and we are prepared to assume that this principle applies not only to the justices as mentioned by Halsbury but to all tribunals and bodies which are given jurisdiction to determine judicially the rights of parties."
>
> (emphasis is ours)

In Manak Lal's case (supra), reliance was also placed by this Court on Rex v. Sussex Justices, Ex parte McCarthy, (1924) 1 KB 256. Relying on the above judgment, this Court had expressed as under:-

> "In support of his argument, Shri Daphtary referred us to the decision in Rex v. Sussex Justices, Ex parte McCarthy. In this case, the Court was dealing with a case arising out of a collision between a motor vehicle belonging to the applicant and one belonging to W. At the hearing of the summons the acting clerk to the justices was a member of the firm of solicitors who were acting for W in a claim for damages against the applicant for injuries received in the collision. After the evidence was recorded the justices retired to consider their decision and the acting clerk also retired with them in case they should desire to be advised on any point of law. The applicant was convicted in the case. This conviction was challenged by the applicant on the ground that it was vitiated by the improper conduct of the justices in allowing the acting clerk to be associated with them when they deliberated about the merits of the case. An affidavit was filed on behalf of the justices that they reached their decision without

> consulting the acting clerk and that the acting clerk had in fact abstained from referring to the case. This affidavit was accepted as true by all the learned judges who heard the case and yet the conviction was quashed. "The question is" observed Lord Hewart C.J. “whether the acting clerk was so related to the case in its civil aspect, as to be unfit to act as a clerk to the justices in the criminal matter" and the learned judge added that "the answer to that question depends not upon what exactly was done but upon what might appear to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference in the course of justice." Lush J. who agreed with Lord Hewart C.J. likewise accepted the affidavit made on behalf of the justices but observed, "that they have placed themselves in an impossible position by allowing the clerk in those circumstances to retire with them into their consultation room."
>
> (emphasis is ours)

This Court in Manak Lal’s case (supra) also placed reliance on Rex v. Essex Justices, Ex parte Perkins, (1927) 2 KB 475. The conclusions recorded in the latter judgment were accepted by this Court, by holding as under:-

> “The same principle was enunciated with equal emphasis in Rex v. Essex Justices, Ex parte Perkins. This was a dispute between a husband and his wife and it appeared that the wife had consulted the solicitor’s clerk in their office about the preparation of a deed of separation from her husband and the lawyer acted in the matter for a time after which she ceased to consult him. No mention of the matter was made to the solicitor himself except one very short reference to it in a weekly report from his clerk. Subsequently the solicitor acted as a clerk to the justices who tried the case. He stated in his affidavit that, when acting as a clerk to the justices on the occasion in question, he had no knowledge that his firm had acted for the wife and that he was in no way adverse to the husband. It was urged that the decision of the justices should be set aside as the justices were not properly constituted and it appears also to have been suggested that the decision might, perhaps, have been influenced by a prejudice though indirectly and to a very small extent. Rejecting the argument that the decision of the justices had been influenced even remotely by the impropriety alleged, Avory J. stated that "though the clerk to the justices and the ’justices did not know that his firm had acted for the applicant’s wife, the necessary, or at least the reasonable, impression, on the mind of the applicant would be that justice was not done seeing that the solicitor for his wife was

> acting with the justices and advising' them on the hearing of the summons which she had taken against him."
>
> (emphasis is ours)

The submission of Shri Ram Jethmalani, learned Senior Counsel for the petitioner, having placed reliance on the judgments was, that we were disqualified from hearing the merits of the claim projected through the instant petition, because of our bias.

102. Dr. Rajeev Dhawan, learned Senior Counsel for the petitioner, seconded the position expressed by Mr. Ram Jethmalani. It was his contention, that there is a pre-disposition in the matter on the part of the Bench. The above pre-disposition, according to him, appears to be on the basis of a strong commitment towards the "other side". The inference of his assertion, according to learned counsel, could be gathered from the fact, that all the proposals offered by the petitioner for his release from detention, had been rejected by us, one after the other. According to learned counsel, the Bench had demonstrated its rigidity to such an extent, that the petitioner finds "no play in the joints". In other words, according to learned counsel, we were willing to accept nothing short of, what we had already ordered. The Bench according to learned Senior Counsel, had repulsed all alternative reasonable grounds of compromise. Learned counsel then invited our attention to an order passed by us on 26.3.2014. The said order is being extracted hereunder:-

> "We have gone through the fresh proposal filed on 25.03.2014. Though the same is not in compliance with our Order dated 31.08.2012 or the Order passed by the three-Judge Bench of this Court on 05.12.2012 in Civil Appeal No.8643 of 2012 and on 25.02.2013 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 inclined to grant interim bail to the contemnors who are detained by virtue of our order dated 04.03.2014, on the condition that 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 nationalized bank be furnished in favour of S.E.B.I. 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 to facilitate the contemnors to further raise the balance amount so as to comply with the Court's Orders mentioned above."
>
> (emphasis is ours)

It was submitted, that the above order passed by this Court was an impossible order. Because it was impossible to implement. It was submitted, that even after the passing of the above order, the petitioner had repeatedly sought modification thereof, through further proposals. In order to demonstrate bias at the hands of the Bench, it was contended, that all subsequent proposals made by the petitioner were rejected unceremoniously. This, according to the learned Senior Counsel for the petitioner demonstrates, that the mind of the Judges hearing the matter was closed, and that, even genuine proposals made by the petitioner were being rejected, without due application of mind.

103. All that has been noticed hereinabove, has been so recorded, lest we are accused of, not having taken into consideration the submissions advanced by the learned counsel for the petitioner, in their correct perspective. However brazen the arguments may be, it is our onerous duty to deal with the contentions advanced by the learned Senior Counsel

for the petitioner. We will make a humble effort to deal with the same, in the following paragraphs.

104. No allegation of bias or prejudice was levelled, when this very Bench was constituted to decide Civil Appeal nos. 9813 and 9833 of 2011. We had heard the learned Senior Counsel for the two companies at great length, and had adjudicated the matter taking into consideration each and every aspect of the controversy projected before us. It has never been the case of the petitioner, that we were biased when we had disposed of the appeals by our common order dated 31.8.2012. On the issue of disbursement of payments by the two companies (to the SEBI), the date of deposit, was extended by an order dated 5.12.2012, passed by a three-Judge Division Bench (in Civil Appeal no. 8643 of 2012 and Writ Petition (Civil) no. 527 of 2012). Neither of us was on the three-Judge Division Bench, which passed the order dated 5.12.2012. It needs to be clearly understood, that the order dated 31.8.2012 read with the order dated 5.12.2012 is final and binding, and no proceedings are pending before this Court, either at the hands of the two companies, or the petitioner herein, for their reconsideration on merits. We have neither the jurisdiction, nor the authority to relax the terms and conditions of the above orders. In fact, we would be committing contempt if we were to, on our own, interfere with the above directions. As a matter of fact, it is not open to us, to relax the order dated 5.12.2012, which was passed by a three-Judge Division

Bench, requiring the contemnors to deposit the first installment of Rs.10,000 crores, in the first week of January 2013.

105. On 6.2.2013, we issued notice, in Contempt Petition (Civil) Nos. 412 and 413 of 2012. On 24.7.2013, we issued notice, in Contempt Petition (Civil) No. 260 of 2013. We heard the above contempt petitions on numerous dates (details whereof have already been enumerated above). No allegation of bias was ever levelled by any of the contemnors, not even by the petitioner herein, before the hearing of the present writ petition. Despite prolonged hearings in the matters pertaining to the two companies, which would directly affect the petitioner herein, no allegation of bias was ever levelled against this Bench hither to before. We are therefore, satisfied that the instant plea of bias, is based on the petitioner's frustration, arising out of being cornered into a situation, wherefrom there is no escape.

106. The assertion, that we would not be satisfied under any circumstances, with the petitioner's arguments and submissions on merits, is clearly misconceived. The assertion made by the petitioner, that we had already prejudged the matter, and no relief could be expected from us, is likewise a total misconstruction of the proceedings we are dealing with. It needs to be understood, that there is no *lis* pending before us, wherein we have to determine the merits of the claims raised by the rival parties. In a situation, where rival claims of parties, have to be decided on merits, such a submission could have possibly been made. Merits of the claims (and

counter-claims) have already been settled by this Court's order dated 31.8.2012. The proceeding wherein the impugned order was passed, was being conducted in the contempt jurisdiction of this Court (under Article 129 of the Constitution of India). The scope of the instant contempt jurisdiction extends to, punishing contemnors for violating Court's orders; punishing contemnors for disobeying Court's orders; punishing contemnors for breach of undertakings given to Courts. It also extends to enforcement of Court's orders. Contempt jurisdiction even extends to punishing those who scandalize (or lower the authority of) any Court; punishing those who interfere in due course of judicial proceedings; and punishing those who obstruct the administration of justice. During the course of hearing, learned counsel again and again, admitted breach of this Court's orders, dated 31.8.2012 and 5.12.2012. It was *inter alia* admitted, that payments could not be made within the time frame stipulated. Contempt by way of breach of this Court's orders having been admitted, the allegation of bias is clearly a plea which is not available to the petitioner. In such consideration, there is no room which remains for further adjudication on merits. There cannot, therefore be a prejudged mind (all that has to be decided, has already been adjudged). For the same reason, there is no scope for a compromise. Issues of compromise arise between parties, while merits of rival claims are pending. The dispute between the parties has already been settled, and contempt by way of breach has already been admitted. The question of compromise does not arise at all. We

therefore reject all the above submissions advanced by the learned counsel for the petitioner.

107. We shall now deal with the substance, and the import, of the judgments relied upon. It is not the case of the petitioner, that we have any connection with either the two companies under reference, or any other company/firm which constitutes the Sahara Group. We may state, that neither of us has even a single share with the two concerned companies or with any other company/firm comprising of the Sahara Group. In order to remove all ambiguity in the matter we would further state, that neither of us, nor any of our dependent family members, own even a single share in any company whatsoever. Neither of us has been assisted in this case, for its determination on merits by any law clerk, intern or staff member, while hearing, dealing with or deciding the controversy. Nor has any assertion in this behalf, been made against us, by the petitioner or his learned counsel. Accordingly the factual position, which was the basis of the decisions relied upon by the learned counsel, is not available in the facts and circumstances of this case. In the above view of the matter, it is but natural to conclude, that none of the judgments relied upon by the learned Senior Counsel for the petitioner, on the subject of bias, are applicable to the facts and circumstances of this case. We are satisfied that none of the disguised aspersions cast by learned Senior Counsel, would be sufficient to justify the invocation of the maxim, that justice must not actually be done, but must also appear to be done. As

already noticed above, even though our combination as a Bench, did not exist at the time, when the present petition was filed, a Special Bench, with the present composition, was constituted by Hon'ble the Chief Justice, as a matter of his conscious determination. No litigant, can be permitted to dissuade us, in discharging the onerous responsibility assigned to us by Hon'ble the Chief Justice.

108. Once it is understood, that we are no longer possessed with any adjudicatory role, insofar as the controversy on merits is concerned, the principal allegation of bias itself pales into insignificance. This Court by its order dated 31.8.2012 had directed the two companies to "… refund the amounts collected through RHPs dated 13.3.2008 and 16.10.2009 along with interest at the rate of 15% per annum to the SEBI, from the date of receipt of the subscription amount till the date of repayment, within a period of three months from today…" The above amount was payable by the two companies by 30.11.2012. It is not a matter of dispute, that neither the two companies nor its promoter or the directors, ever sought extension of time in making the above payment, by initiating proceedings known to law, either in Civil Appeal no. 9813 or 9833 of 2011. The two companies, however, filed Writ Petition (Civil) no. 527 of 2012 in the same manner, as the petitioner has filed the present writ petition. The filing of the above writ petition was itself a matter of serious concern with the legal fraternity, to the extent that the President of the Supreme Court Bar Association had *suo moto* intervened in the above matter, to advance submissions before

the three-Judge Division Bench. The three-Judge Division Bench while disposing of the matter on 5.12.2012, declined to accept the prayer made by the two companies, for taking into consideration the refund already made by way of redemptions to investors. At the time of disposal of Writ Petition (Civil) no. 527 of 2012 (and Civil Appeal no. 8643 of 2012) on 5.12.2012, it was directed, that the demand draft in the sum of Rs.5,120 crores, which had been produced before this Court on 5.12.2012, be immediately handed over. It was concluded, that the balance amount of Rs.17,400 crores, together with interest at the rate of 15% per annum, was still payable (even after the deposit of above Rs.5,120 crores). A direction was accordingly issued to pay the first installment of Rs.10,000 crores within the first week of January, 2013. The application filed by the petitioner for extension of time to make the above deposit, was rejected by a three-Judge Division Bench of this Court on 25.2.2013. The direction to pay the first installment of Rs.10,000 crores, by the first week of January, 2013, therefore, assumed finality. We have neither the authority nor the jurisdiction to entertain any prayer for reducing the sum directed to be paid, as the first installment. The submission of the learned Senior Counsel for the petitioner, that we are unrelenting, or that we are pre-disposed, or that we have a closed mind, is therefore, just a bogey projected by learned Senior Counsel representing the petitioner. As a matter of fact, by our conscious effort, we have unilaterally relaxed the rigor of the first installment of Rs.10,000 crores, as much as we could, by our order dated 26.3.2014. Unfortunately, the above order is also not acceptable to the

petitioner. But acceptability apart, our above voluntary action of slackening the effect of the first installment, directed to be paid by the two companies, within the first week of January 2013, is clearly sufficient to repudiate and reject, all submissions in the nature of our having a predisposed mind.

109. While rendering the instant judgment, we have recorded the efforts made by this Court to cajole the contemnors (including the present petitioner) into compliance of this Court's orders dated 31.8.2012 and 5.12.2012, under an independent heading (IV. Efforts made by this Court to cajole the contemnors, including the petitioner – Mr. Subrata Roy Sahara, for compliance of the orders of this Court, dated 31.8.2012 and 5.12.2012). The long rope given to the two companies including the petitioner, and the other directors, demonstrates the efforts made by us to help the petitioner (and others) out of the mess, in which they find themselves. As of now, the amount payable in furtherance of the directions issued by this Court (on 31.8.2012 and 5.12.2012), has swelled up to Rs.36,608 crores. Each proposal made by the petitioner till date, reveals an acknowledgment to pay. The petitioner has offered to deposit Rs.2,500 / 3,000 crores, in the proposals made thus far, and the remaining amount of the first instalment (i.e., Rs.7,500 / 7,000 crores), later on. Therefore, the proposals submitted thus far, only acknowledge payment of Rs.10,000 crores. None of the proposals, covers the whole amount payable. The proposals, as a matter of a precondition, demand the revocation of restraint orders on bank accounts, and movable as well as,

immovable properties. It may be understandable, that the restraint order is lifted in respect of the bank accounts, and properties, which are to be utilized in discharge of the liability arising out of this Court's orders (dated 31.8.2012 and 5.12.2012). Repeatedly, during Court hearings, we have been assuring learned counsel for the petitioner, that individual accounts will be permitted to be operated, if the deposits therein are to be transferred to the SEBI. Likewise, orders pertaining to particular immovable properties, will be lifted, if the sale proceeds thereof are to be utilized in honouring the commitment to refund investors' deposits (with 15% interest). None of the contemnors, have made any proposal, in consonance with the above liberty. Acceptance of the proposals is just not possible, in the teeth of the order dated 5.12.2012, passed by a three-Judge Division Bench, requiring the two companies to make a deposit of Rs.10,000 crores in the first week of January, 2013. By now, about 17 further months have elapsed without the petitioner and the two companies having made any deposit whatsoever. Within the framework of the requirement depicted in the order dated 5.12.2012, we, by our own order dated 26.3.2014 (extracted above), softened the modus of payment. It is, therefore, not possible for us to accept, that there has been "no play in the joints" for the enforcement of the orders passed by this Court. We find the submission made by the learned counsel for the petitioner to the effect, that our order dated 26.3.2013 cannot be complied with, because it was premised on impossible conditions, is wholly unjustified. The assets of the

Sahara Group are sufficient to discharge the entire liability, without much difficulty.

110. Insofar as the assertion made by Dr. Rajeev Dhawan, learned Senior Counsel, that the factual position expressed in the order dated 4.3.2014 was not correct, is concerned, we may at the cost of repetition once again notice, that it is also important for us to record that the positive position expressed by the SEBI before this Court (during the disposal of Civil Appeal Nos.9813 and 9833 of 2011) was, that neither SIRECL nor SHICL ever provided details of its investors to the SEBI (FTM). They contested the proceedings initiated by the SEBI (FTM) only on technical grounds. We were told that even before the SAT, no details were furnished. As against the above, the position adopted by the SIRECL before us, during the course of appellate proceedings was, that SIRECL had furnished a compact disc with all details to the SEBI (FTM), along with its operating key. Whilst it was acknowledged by the SEBI before this Court, that a compact disc (allegedly containing details about the investors) was furnished by SIRECL, yet it was emphatically pointed out, that its operating key was withheld. This was another ploy, in the series of moves adopted by the two companies to withhold the providing of any details to the SEBI. Resultantly, no details whatsoever were ever disclosed by SIRECL either before the SEBI (FTM) or the SAT. The position adopted by SHICL was even worse. It is necessary to place on record the fact, that the SHICL has never ever disclosed, the names and

other connected details of even a single investor to the SEBI, despite this prolonged litigation. We had repeatedly made a poser, during the hearing of the present petition, about SHICL, as indicated above. The position was confirmed by learned Senior Counsel representing the SEBI. Unfortunately, Mr. S. Ganesh, learned Senior Counsel for the petitioner, on the last day of hearing, ventured to contest the above position. He handed over to us two volumes of papers running into 260 pages (under the title – Note on information provided by SHICL to the SEBI). We required him to invite our attention, to documents indicating disclosure of the above information. His ploy stood exposed, when no material depicting disclosure of names, and other connected details of SHICL to the SEBI, could be brought to our notice. That apart, what is essential to record is, that till date SHICL has never ever supplied investor related details to the SEBI. A fact about which there is now no ambiguity, specially after learned Senior Counsel filed the two volumes of papers referred to above. The above factual position remained unaltered before the SAT and even before this Court. Does it lie in the mouth of learned Senior Counsel to assert, that unjustified conclusions had been recorded against the two companies, without any basis?

111. Dr. Rajeev Dhawan, learned Senior Counsel also accused us of having a pre-disposition in respect of the controversy. This predisposition, according to him, appeared to be on the basis of a strong commitment towards the “other side”. This assertion was repeated several times during

the hearing. But, which is the other side? In terms of our order dated 31.8.2012, the only gainer on the other side, is the Government of India. The eighth direction of our order dated 31.8.2012, reads as under:-

> "8. SEBI (WTM) if, after the verification of the details furnished, is unable to find out the whereabouts of all or any of the subscribers, then the amount collected from such subscribers will be appropriated to the Government of India."
>
> (emphasis is ours)

If the "other side", is the Government of India, there is certainly no substance in the aspersion cast by the learned counsel. Just the above aspect of the matter is sufficient to burst the bubble, of all the carefully crafted insinuations, systematically offloaded, by learned counsel, for effect and impact.

112. At this juncture we may refer to a decision of this Court which has a bearing on the subject in hand. Reference is being made to the observations made by this Court, in Jaswant Singh v. Virender Singh & Ors., 1995 Supp. (1) SCC 384:-

> "32. Before parting with this judgment, there is however, one matter which has caused us considerable concern and we wish to advert to it. After the recount had been ordered by the learned Single Judge in the High Court and the Deputy Registrar had carried out the inspection of the ballot papers of the specified booths, the appellant filed an application in the High Court under Section 151 CPC seeking stay of the further arguments to enable the appellant to move the Supreme Court. In the said application the appellant referred to certain 'observations' made by the learned Judge during the course of arguments and also referred to the manner in which the two packets containing ballot papers which had been objected to by both the parties and had been kept for scrutiny of the learned Single Judge, were handled by the learned Judge. The appellant went on to say that "by doing this the Hon'ble Court was pleased to make these ballot papers suspect and doubtful and these cannot be considered for any decision on them regarding their validity or otherwise as these remained in unsealed condition for

uncertainable time without the petitioner or his Counsel being present there". The learned Judge by his order dated 13.5.1993 recorded the following proceedings:

> "Counsel for the petitioner has not appeared and the petitioner himself has made a request that he wants to move the Hon'ble Supreme Court for transfer of the Election Petition from this Court. In view of this statement, the petition is being adjourned. The petitioner wants to place as application for transfer on record. He may file it in the Registry, if so advised.
>
> During the course of arguments yesterday, two sealed envelopes relating to polling booth Nos. 28 and 31 had been opened in the presence of the parties and their Counsel at the time when the report of the Commissioner who carried out test checking was being considered. These open envelopes had remained in my custody in my Almirah under lock and key. Since the case is now being adjourned, these open envelopes be resealed and the same be handed over to the Additional Registrar (Judicial) alongwith other sealed envelopes."

33. Thereafter, the appellant as already noticed, filed a transfer petition in this Court which was dismissed on 30.8.1993. The transfer petition like the application (supra) cast aspersions on the learned Judge in the discharge of his judicial functions and had the tendency to scandalise the Court. It was an attempt to brow beat the learned Judge of the High Court and cause interference in the conduct of a fair trial. Not only are the aspersions derogatory, scandalous and uncalled for but they also tend to bring the authority and administration of law into disrespect. The contents of the application seeking stay as also of the transfer petition, bring the Court into disrepute and are an affront to the majesty of law and offend the dignity of the Court. The appellant is an Advocate and it is painful that by filing the application and the petition as a party in person, couched in an objectionable language, he permitted himself the liberty of indulging in an action, which ill behoves him and does little credit to the noble profession to which he belongs. An advocate has no wider protection than a layman when he commits an act which amounts to contempt of court. It is most unbefitting for an advocate to make imputations against the Judge only because he does not get the expected result, which according to him is the fair and reasonable result available to him. Judges cannot be intimidated to seek favorable orders. Only because a lawyer appears as a party in person, he does not get a license thereby to commit contempt of the Court by intimidating the Judges or scandalising the courts. He cannot use language, either in the pleadings or during arguments, which is either intemperate or unparliamentary. These safeguards are not for the protection of any

> Judge individually but are essential for maintaining the dignity and decorum of the courts and for upholding the majesty of law. Judges and courts are not unduly sensitive or touchy to fair and reasonable criticism of their judgments. Fair comments, even if, out-spoken, but made without any malice or attempting to impair the administration of justice and made in good faith, in proper language, do not attract any punishment for contempt of court. However, when from the criticism a deliberate, motivated and calculated attempt is discernible to bring down the image of judiciary in the estimation of the public or to impair the administration of justice or tend to bring the administration of justice into disrepute the courts must bestir themselves to uphold their dignity and the majesty of law. The appellant, has, undoubtedly committed contempt of the Court by the use of the objectionable and intemperate language. No system of justice can tolerate such unbridled licence on the part of a person, be he a lawyer, to permit himself the liberty of scandalising a Court by casting unwarranted, uncalled for and unjustified aspersions on the integrity, ability, impartiality or fairness of a Judge in the discharge of his judicial functions as it amounts to an interference with the dues course of administration of justice."
>
> (emphasis is ours)

The observations recorded in the above judgment are fully applicable, to the mannerism and demeanour of the petitioner – Mr. Subrata Roy Sahara and some of the learned Senior Counsel. We would have declined to recuse from the matter, even if the "other side", had been a private party. For, our oath of office requires us to discharge our obligations, without fear or favour. We therefore also commend to all Courts, to similarly repulse all baseless and unfounded insinuations, unless of course, they should not be hearing a particular matter, for reasons of their direct or indirect involvement. The benchmark, that justice must not only be done but should also appear to be done, has to be preserved at all costs.

IX. A few words, about the defence of redemption of OFCD's, offered by the two companies:

113. The SEBI (FTM) vide order dated 23.6.2011 passed the following directions:-

> "1. The two Companies, Sahara Commodity Services Corporation Limited (earlier known as Sahara India Real Estate Corporation Limited) and Sahara Housing Investment Corporation Limited and its promoter, Mr. Subrata Roy Sahara, and the directors of the said companies, namely, Ms. Vandana Bhargava, Mr. Ravi Shankar Dubey and Mr. Ashok Roy Choudhary, jointly and severally, shall forthwith refund the money collected by the aforesaid companies through the Red Herring Prospectus dated March 13, 2008 and October 6, 2009, issued respectively, to the subscribers of such Optionally Fully Convertible Debentures with interest of 15% per annum from the date of receipt of money till the date of such repayment.
>
> 2. Such repayment shall be effected only in cash through Demand Draft or Pay Order.
>
> 3. Sahara Commodity Services Corporation Limited (earlier known as Sahara India Real Estate Corporation Limited) and Sahara Housing Investment Corporation Limited shall issue public notice, in all editions of two National Dailies (one English and one Hindi) with wide circulation, detailing the modalities for refund, including details on contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect.
>
> 4. Sahara Commodity Services Corporation Limited (earlier known as Sahara India Real Estate Corporation Limited) and Sahara Housing Investment Corporation Limited are restrained from accessing the securities market for raising funds, till the time the aforesaid payments are made to the satisfaction of the Securities and Exchange Board of India.
>
> 5. Further, Mr. Subrata Roy Sahara, Ms. Vandana Bhargava, Mr. Ravi Shankar Dubey and Mr. Ashok Roy Choudhary are restrained from associating themselves, with any listed public company and any public company which intends to raise money from the public, till such time the aforesaid payments are made to the satisfaction of the Securities and Exchange Board of India."
>
> (emphasis is ours)

Thereafter, the SAT by its order dated 18.10.2011, upheld the order passed by the SEBI (FTM) dated 23.6.2011. The SAT having so held,

directed the appellant companies (as was the position of parties therein) to refund the money to the investors within six months (from the date of its order dated 18.10.2011). Thereupon, the matter was brought to this Court by way of appeals preferred by the two companies concerned, i.e., Civil Appeal nos. 9813 and 9833 of 2011. On 28.11.2011, this Court passed the following interim order:-

> "By the impugned order, the appellants have been asked by SAT to refund a sum of Rs.17,400 crores approximately on or before 28.11.2011. We extend the period upto 9.1.2012."

The above interim order was continued indefinitely, by this Court on 9.1.2012. The direction to refund, therefore, stood eclipsed. It is necessary to understand the cumulative effect of the interim orders passed on 28.11.2011 and 9.1.2012. The above orders need to be interpreted, by keeping in mind the two affidavits dated 4.1.2012 filed by the two companies (in Civil Appeal nos. 9831 and 9833 of 2011). The above affidavits were filed in compliance of this Court's order, requiring the two companies to put on record, the manner in which the companies had applied the funds collected from the investors. This Court was informed that the funds were safe as they were either invested directly or indirectly, in real estate projects, or were held as current assets/cash and bank balances (as development rights on land and projects, and advances under joint ventures etc.). Believing the factual position depicted in the two affidavits, this Court was satisfied, that the investors' deposits in the OFCD's of the two companies were safe, therefore, the direction to refund (ordered by the SEBI (FTM) and the SAT), came to be stayed. But the

orders of the SEBI (FTM) and SAT were not interfered with, in any other manner. It is, therefore clear, that this Court while passing the above interim order, did not vary the manner of making the refunds (in case the two companies concerned, decided to make any refund(s) to the investors). In this behalf it needs to be noticed, that in its order dated 23.6.2011 the SEBI (FTM) had clearly directed, that such repayment could only be made "in cash through demand draft or pay order". The SAT had reiterated the above position. No liberty was granted to the two companies concerned, to convert the investment made by the holders of the OFCD's, into similar investments with the other companies. In other words cash conversion in any other format, was not permitted. To comply with the letter and spirit of law, therefore, even if the refund had to be made by the two concerned companies, it could have been done only "through" demand drafts or pay orders. The alleged cash payment made by the two companies while redeeming the OFCD's (even if we assume, that refund had actually been made) was therefore per se, illegal and unacceptable in terms of the orders dated 23.6.2011 (passed by the SEBI (FTM)) and 18.10.2011 (passed by the SAT). We must, therefore emphatically point out, that the very submission now made by the companies, that the investors were refunded their deposits by way of cash, is per se another tactic, in the series of manoeuvres, adopted by the two companies to defeat the process of law.

114. This issue needs to be examined from another perspective. The different kinds of bonds (OFCDs) issued by SIRECL and SHICL, as also, their maturity/conversion periods are depicted hereunder:

SIRECL

S.No.	Name of Bonds	Term (months)	Minimum period for redemption (months)	Period for conversion into shares (months)
(i)	Abode Bond	120	60	119
(ii)	Real Estate Bond	60	Nil	59
(iii)	Nirman Bond	48	18	47

SHICL

S.No.	Name of Bonds	Term (months)	Minimum period for redemption (months)	Period for conversion into shares (months)
(i)	Multiple Bond	180	120	179
(ii)	Income Bond	120	Nil	119
(iii)	Housing Bond	180	120	179

It would be relevant to mention, that in furtherance of the terms and conditions attached to the different kinds of bonds, it was acknowledged, that except for Nirman Bonds issued by SIRECL, no other bond could be redeemed before the year 2013. The earliest redemption of the bonds, could have been made in 2013. The above factual position was expressed by the two companies in separate affidavits dated 4.1.2012 (filed before this Court). The affidavits in unmistakable terms also clearly narrated, that only one out of the six different types of bonds issued, by the two companies was partially redeemable, in the financial year 2012-13. The companies also confirmed in their above affidavits, that the total amount which would become redeemable, towards the end of the financial year 2012-13, was only Rs.351 crores. There was therefore, no question of

redeeming thousands of crores of rupees of deposits made towards the above OFCD's, in 2012 itself. It needs to be understood, that a debenture (OFCD) is a contract between a company and the debenture holder. It sets out the terms and conditions on the basis of which, the debenture certificate, which is a debt instrument, has been issued. It is neither open to the concerned company, nor the debenture holder, to grant/seek premature redemption. No company can unilaterally redeem the debentures, before the prescribed period. The theory of redemption propounded by the two companies, is therefore in clear violation of law. In any case, there was no reason for the two companies to refund any money to the investors, specially because the two companies were protected by an order of this Court, from making any refund to the investors, during the pendency of the appellate proceedings (Civil Appeal Nos. 9813 and 9833 of 2011), which continued up to 31.8.2012. A submission was, however, made during the course of hearing, that the investors were mounting a collective pressure for premature payments. The two companies (nor the petitioner, in this case) did not place any material on the record of its pleadings, at any stage to demonstrate, that mobs had gathered at the companies collection centres, demanding redemptions. Had the above position been correct, the same would have definitely been noticed and reported by the media. There was not even an iota of such media reporting. It is therefore *prima facie*, not possible for us to accept the refund theory, projected on behalf of the two companies (or even by the petitioner). Besides the factual position expressed in the instant

paragraph, there are other reasons also, to come to the same conclusion. The same are separately being recorded hereinafter.

115. Factually there is no acceptable proof of such refund/redemption of OFCD's by the two companies to the investors. Therefore, we find no reason to accept per se, that any such redemption was actually made. Our reasons for the same, are being narrated hereafter. When SIRECL was required to disclose, the sources from which, it had made payments by way of redemption to the OFCD's holders, the following sources were disclosed:-

		Rupees (In Crores)
1.	Sahara Credit Co-operative Society Ltd.	13,366.18
2.	Sahara India Commercial Corporation Limited	4384.00
3.	Sahara Q Shop	2258.32
4.	Ketak City Homes Ltd.	19.43
5.	Kirit City Homes Ltd.	44.05

Likewise, when similar information about redemptions was sought from SHICL, the following sources were disclosed:-

		Rupees (In Crores)
1.	SICCL	2479.00
2.	Sahara Q Shop	2411.90

When asked about the manner in which the aforesaid companies, had forwarded the above mentioned payments to the two companies, the response was, that the above amounts were never released to the two companies. The case set up was, that the amounts were transferred to

Sahara India (Firm). When asked to explain the manner in which the companies had forwarded the funds to Sahara India (Firm), the submission was, that the companies had collected the funds by way of cash, and had forwarded the same to Sahara India (Firm), by cash. And Sahara India (Firm) had then directly made refunds to the investors. When proof of the same was sought, the submission advanced on behalf of the two companies was, that the above transfers were not made through banking channels, and therefore banking transactions were not available to establish the same. When asked how the amounts were disbursed to the investors concerned, it was submitted, that about 95% of the above payments to the investors, were also made by way of cash. To demonstrate the receipts and payments of the funds by way of cash, learned counsel representing the contemnors (including the petitioner herein), invited our attention to the books of accounts, which had been duly audited. This according to learned counsel, was proof of the transactions under reference. The above explanation may seem to be acceptable to the contemnors, but our view is quite the converse. It is not possible for us to accept, that the funds amounting to thousands of crores could have been transacted by way of cash. The credibility of the books of accounts relied upon by the two companies has been dealt with separately hereinafter.

116. We had also made efforts to obtain details in respect of redemption from the two companies, after Mr. Arvind Datar, learned Senior Counsel

appearing for the SEBI, informed this Court, that the contemnors including the petitioner herein, had been asserting that they had refunded Rs.17,443 crores (approximately) in case of SIRECL and Rs.5,442 crores (approximately) in case of SHICL, but had not given any details, nor produced any relevant record, to show the source from which they had got the above moneys for repayment. This information, according to Mr. Datar, had been sought by the SEBI from the alleged contemnors through a letter dated 28.5.2013. Based on the above prayer, we passed the following order on 11.12.2013:-

> "Heard counsel on either side.
>
> Following our orders dated 28.10.2013, 1.11.2013 and 21.11.2013, Mr. C.A. Sundaram, learned senior counsel, has taken us through Annexure-A, filed alongwith IA no. 82 of 2013, which gives details of various properties which the alleged contemnors have agreed to offer to SEBI. Reference was specifically made to properties mentioned at Item nos. 68, 69 and 70, which, according to Mr. Sundaram, would fetch a value of more than Rs.11,000 crores.
>
> Mr. Arvind Datar, learned Senior Counsel appearing for the SEBI, prayed for some time to verify the same as well as the valuation reports filed along with the IA in support of that prayer. However, he submitted that if it is the stand of the alleged contemnors that they had refunded the amounts (Rs.17443 crores approximately in case of SIRECL and Rs.5442 crores approximately in case of SHICL), then they should produce the relevant records, duly certified by a competent authority which is acceptable in a Court of law, indicating the sources from which they got the money for repayment, as requested vide SEBI's letter dated May 28, 2013.
>
> Put up on January 09, 2014 at 2.00 p.m."
>
> (emphasis is ours)

117. The fact that the companies had not furnished the above details, was brought to our notice by Mr. Arvind Datar on 9.1.2014. But the audacity and the fearlessness of the two companies is apparent, from the

reason expressed to this Court, for not furnishing the above information. We were informed, that we had not passed any express direction to the companies, to furnish the information, therefore the companies were not obliged to provide the information to the SEBI. Ordinarily, an honest person would immediately provide the information sought, to obviate any adverse impression. Moreover, the SEBI had not only the authority, but every reason to seek the said information. The above stance adopted by the two companies, therefore, prompted us on 9.1.2014 to pass an express order directing the two companies, as also, the alleged contemnors (including the present petitioner), to furnish the required particulars. The order dated 9.1.2014 is being extracted below:-

> "Heard counsel on either side.
>
> Mr. C.A. Sundaram, learned Senior Counsel appearing for one of the alleged contemnors, submitted that earlier this Court on December 11, 2013 has only reiterated the submission made by Mr. Arvind Datar, learned Senior Counsel appearing for SEBI, that they did not disclose the source from which they got money for repayment, despite SEBI's letter dated May 28, 2013.
>
> Mr. Sundaram is right in his submission. However, we feel that it would be appropriate to give a direction of the nature stated above.
>
> Accordingly, we direct the alleged contemnors to disclose the complete details and source from which they repaid the amount to the investors as also the manner of making payments. They shall also disclose the information which SEBI has sought from them from time to time. Such information shall be provided to SEBI and also be filed in this Court by January 23, 2014.
>
> Put up on January 28, 2014 at 2.00 p.m.
>
> In the meantime, SEBI shall verify the information provided to it by the alleged contemnors."
>
> (emphasis is ours)

If redemption of funds had actually been made by the two companies, they would have immediately furnished the information sought. Now that there was an express order to furnish the information, room for any excuse, was ruled out. Surprisingly, the position remained the same. The two companies never provided any authentic information. The SEBI, SAT and the Supreme Court, were required to accept the factum of redemption, just because the companies were asserting the factum of redemption.

118. To persuade the companies once again, to provide the information sought by the SEBI, we passed yet another explicit order on 28.1.2014. The same is being extracted hereunder:

> ""Heard Mr. Ram Jethmalani, learned Senior Counsel and Mr. Arvind P. Datar, learned Senior Counsel.
>
> Mr. Datar submitted that the Saharas have not disclosed the details as to when the refund was made. Reference was made to pages 6 to 9 of the reply affidavit filed today.
>
> Mr. Datar further submitted that the SEBI requires an explanation from Saharas with regard to the payments made on behalf of Sahara India Real Estate Corporation Ltd. (SIRECL) (partnership firm) by the following firms, as mentioned below:-
>
> | | | Rupees (In Crores) |
> |---|---|---|
> | 1. | Sahara Credit Co-operative Society Ltd. | 13,366.18 |
> | 2. | Sahara India Commercial Corporation Limited | 4384.00 |
> | 3. | Sahara Q Shop | 2258.32 |
> | 4. | Ketak City Homes Ltd. | 19.43 |
> | 5. | Kirit City Homes Ltd. | 44.05 |
>
> Similarly, SEBI requires Saharas to show the following payments made on behalf of Sahara Housing Investment Corporation Ltd. (SHICL) (partnership firm), by the following firms, as mentioned below:-
>
> Rupees(In Crores)

1. SICCL 2479.00
2. Sahara Q Shop 2411.90

Further, the Saharas will also provide the bank statements of the above firms showing when the amount was paid to the partnership firms and subsequently when and how partnership firm made the disbursement, as sought for by the SEBI.

Mr. Ram Jethmalani, learned Senior Counsel appearing for the respondents submitted that he will examine the same and come out with a response within a week."

(emphasis is ours)

The above order is self-explanatory. The two companies, as also, the contemnors including the present petitioner, were obviously not providing the required bank statements, even though in Appeal no. 49 of 2013 filed by SIRECL before the SAT, and in Appeal no. 48 filed by SHICL before the SAT, the two companies had committed to furnish their bank accounts, to establish redemption of payments. The relevant paragraph containing the undertaking given by SIRECL, is being extracted hereunder:-

"(ee) The Appellant has invested the funds of OFCD as per the details mentioned in the Affidavit dated 04.01.2012 of Shri B.M. Tripathi filed before the Hon'ble Supreme Court in Civil Appeal No. 9833 of 2011 which is already on the record of the Hon'ble Supreme Court. Further, it is submitted that in order to make redemptions to the OFCD holders, the Appellant had to dispose of the investments. Amounts realized on such disposal were utilized to pay the investors, on redemption through Sahara India-Partnership Firm to make the redemptions. The redemptions made to investors are clearly reflected and found in the Books of Accounts of Sahara India. The Appellant crave leave to refer to and rely upon bank accounts of Sahara India as and when produced."

(emphasis is ours)

An exactly similar commitment, in exactly the same words was made by SHICL, in Appeal no. 48 of 2013, filed by it before the SAT. Even though the stance adopted by the two companies was, that verification of redemptions of OFCD's could be established from bank accounts of

Sahara India Limited, the said bank accounts depicting the said transactions were never disclosed.

119. All that needs to be noticed is, that in furtherance of the directions issued by this Court, Mr. S. Ganesh, learned Senior Counsel, during the course of hearing, produced general ledger entries of SIRECL and SHICL, to authenticate the receipt of funds, out of which refunds were made. The general ledger entries brought to our notice merely indicated large amounts of inflow/outflow of cash. We had wished to extract the same herein. The entire general ledger entries, placed for the consideration of the Court to demonstrate receipt of funds, out of which redemptions were made, would have exposed the companies' outrageous defence. But since the above entries would make this judgment unnecessarily bulky, we considered it just and appropriate, to extract entries of only one day, i.e., of 31.5.2012. A day picked up randomly, without any comprehension, of its eventual effect. The date was chosen only with one objective, namely, it fell within the period during which the two companies claim to have made cash refunds to the investors. The same are accordingly reproduced below:-

SAHARA INDIA REAL ESTATE CORPORATION LTD.
6TH FLOOR, CASH & BANK
GENERAL LEDGER

VOC. DATE	VOC. NO.	CHQ. NO.	NARRATION OF THE VOUCHER	SUB CODE	DEBIT	CREDIT
31/05/2012	5000099BV	072282	CHEQUE DEPOSITED BY SAHARA INDIA			1,40,00,000.00
31/05/2012	5000149JV		AMT. OF E-TAX PAID TH. SAHARA INDIA			11,03,260.00
31/05/2012	5000150JV		AMT. OF E-TAX PAID TH. SAHARA INDIA			11,11,321.00

31/05/2012	500015 5JV		BEING JV NO. 5000120 DT. 260512 WRONGLY CR TO INSURANCE TO VEHICLE INSTEAD OF SI NOW RECTIFIED AND TRF TOWARDS INSURANCE AMT. DEDUCTED FROM SI			40,162.00
31/05/2012	500016 1JV		BEING BV NO 50000360 DT 10052012 WRONGLY CR TO SI INSTEAD OF SUNDRY ADV 430109		53,75,932.00	
			PAGE TOTAL		53,75,932.00	55,61,27,771.00
			CARRIED FORWARD		22,86,45,04,128.78	30,43,18,43,975.28

XXX XXX XXX XXX XXX

SAHARA INDIA REAL ESTATE CORPORATION LTD.
6TH FLOOR, CASH & BANK
GENERAL LEDGER

VOC. DATE	VOC. NO.	CHQ. NO.	NARRATION OF THE VOUCHER	SUB CODE	DEBIT	CREDIT
			BROUGHT FORWARD		22,86,45,04,128.78	30,43,18,43,975.28
31/05/2012	50001 85JV		BEING AMT OF SECURITY FUND PAID MS SC YA DAV THROUGH CV NO 5000530 DT 310512	KSF0002 (EMPLOYEE MISSING)	2,000.00	
31/05/2012	50001 87JV		BEING AMOUNT OF COMMISSION PAID DURING THE M/O MAY-2012			6,477.00
31/05/2012	50001 89JV		BEING RENT OF WARE HOUSES PROVIDED FOR THE M/O MAY-2012 AS PER AGREEMENT			6,71,756.00
31/05/2012	50001 91JV		BEING AMOUNT DEPOSITED BY SAHARA INDIA EMPLOYEE'S & EMPLOYER'S CONTRIBUTION PF, PENSION, ADM CHG ON PF, EDLI FOR THE M/O APR-2012			15,24,021.00
31/05/2012	50001 96JV		BEING AMOUNT OF EDLI CHARGES FOR THE M/O MAY, 2012 PAID BY SAHARA INDIA			22,820.00
31/05/2012	50002 01JV		BEING AMT RECEIVABLE FROM SICOL AS PER TERMINATION AGREEMENT DATED 11.05.2012 TRF TO SAHARA INDIA AS PER LETTER DATED 24.05.2012		19,42,65,437.00	
31/05/2012	50002 03JV		BEING AMT RECEIVABLE FROM SICOL AS PER TERMINATION AGREEMENT DATED 11.05.2012 TRF TO SAHARA INDIA AS PER LETTER DATED 25.05.2012		44,04,86,210.00	
31/05/2012	50002 07JV		BEING AMOUNT RECEIVABLE FROM SQSURPL AGAINST AGREEMENT DT. 31.05.12 TRFD. TO SAHARA INDIA AS PER LETTER DT. 31.05.12 & ADV. OF 4 SUBI ALSO TRF		5,37,87,17,066.00	
31/05/2012	50002 07JV		BEING AMOUNT RECEIVABLE FROM SQSURPL AGAINST AGREEMENT DT. 31.05.12 TRFD. TO SAHARA INDA AS PER LETTER DT. 31.05.12 & ADV OF 4 SUBI ALSO TRF.		4,57,140.00	
31/05/2012	50002 11JV		BEING AMT RECEIVABLE FROM SAHARA INDIA AS PER SIRECL LETTER DATED 11.05.12		14,37,00,00,000.00	

31/05/2012	50002 13JV		BEING AMOUNT RECEIVABLE FROM SCCSL TOWARDS SALE OF SHARES NOW RECEIVABLE FROM SAHARA INDIA AS PER LETER ENCLD.		1,33,66,18,11,270.00	
31/05/2012	50002 15JV		BEING AMT OF SWF DEDUCTED DURING THE M/O MAY-12		10,464.00	
31/05/2012	50002 16JV		BEING AMT OF FINE & PENALTIES DEDUCTED FROM WORKER IN M/O MAY-2012		50.00	
31/05/2012	50002 17JV		BEING AMT DEDUCTED TOWARDS APNA PARIWAR DURING THE M/O MAY-12		40.00	
31/05/2012	50002 18JV		BEING AMT OF SSWF DEDUCTED DURING THE M/O MAY-12		58.00	
31/05/2012	50002 19JV		BEING AMOUNT RECOVERED FROM F.W. DURING THE M/O MAY-12		60.00	
31/05/2012	50002 20JV		BEING SERVICE CHG RECEIVED IN THE M/O MAY-2012		48.00	
31/05/2012	50002 21JV		BEING AMOUNT RECEIVED FROM CUSTOMER DURING THE M/O MAY-12		57,69,750.00	
31/05/2012			PAGE TOTAL		1,54,05,15,19,593.00	22,25,074.00
31/05/2012			CARRIED FORWARD		1,76,91,60,23,721.78	30,43,40,69,049.28

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SAHARA INDIA REAL ESTATE CORPORATION LTD.
6TH FLOOR, CASH & BANK
GENERAL LEDGER

VOC. DATE	VOC. NO.	CHQ. NO.	NARRATION OF THE VOUCHER	SUB CODE	DEBIT	CREDIT
			BROUGHT FORWARD		1,76,91,60,23,721.78	30,43,40,69,049.28
31/05/2012	50002 22JV		BEING AMOUT RECEIVED FROM CUSTOMER DURING THE M/O MAY-12		1,08,966.00	
31/05/2012	50002 23JV		BEING AMOUNT RECEIVED FROM CUSTOMER DURING THE M/O MAY-12		28,22,765.00	
31/05/2012	50002 24JV		BEING AMOUNT RECEIVED FROM CUSTOMER DURING THE M/O MAY-12		49,547.00	
31/05/2012	50002 25JV		BEING AMOUNT RECEIVED FROM F.W. DURING THE M/O MAY-12		11.00	
31/05/2012	50002 26JV		BEING AMOUNT PAID TO BOND HOLDERS DURING THE M/O MAY-12			37,39,86,45,750.00
31/05/2012	50002 27JV		BEING INTT. PAID TO BOND HOLDERS DURING THE M/O MAY-12			12,22,41,30,389.00
31/05/2012	50002 28JV		BEING AMT PAID TO BOND HOLDER TOWARDS LOAN AGAINST OFCD DURING THE M/O MAY-12			59,72,79,970.00
31/05/2012	50002 29JV		BEING AMT RECOVERED FROM BOND HOLDERS DURING THE M/O MAY-12 TOWARDS LOAN GIVEN AGAINST OFCD		1,13,05,48,059.00	
31/05/2012	50002 30JV		BEING INTT RECOVERED FROM BOND HOLDERS DURING THE M/O MAY-12 TOWARDS LOAN GIVEN AGAINST OFCD		15,35,36,852.00	
31/05/2012	50002 31JV		BEING TDS DEDUCTED DURING THE M/O MAY-12 AGAINST INTT		1,50,03,876.00	

			PAID TO BOND HOLDER			
31/05/2012	50002 32JV		BEING AMOUNT OF COMMISSION PAID TO OTHER THAN SIRECL STAFF			30,24,984.00
31/05/2012	50002 34JV		BEING COMMISSION PAID DURING THE M/O MAY-12			1,61,17,023.00
31/05/2012	50002 35JV		BEING AMOUNT OF DEATH HELP PAID TO BOND HOLDER			7,020.00

(the sole cheque entry has been underlined, all the remaining entries are cash entries).

A perusal of the above general ledger entries reveals just one cheque entry, and enormous inflow/outflow of funds by way of cash. On a single day (31.5.2012), the cash inflow is shown as Rs.15,535,89,65,601.00 (i.e. more than rupees fifteen thousand five hundred and thirty five crores). Mind boggling inflows, just by cash. Most certainly not acceptable as true, unless there is authentic supporting material. Can these general ledger entries ever be the basis for accepting, that the entire cash transactions were correct? We do not think so. Mr. S. Ganesh, learned Senior Counsel for the petitioner, was surprisingly in agreement with us. But his pointed submission was, that the above entries assumed authenticity, because they had been duly audited by a firm of Chartered Accountants. Our attention was invited to the two certificates issued by the firm of Chartered Accountants, both dated 31.1.2014, which were placed on the record of the case by the petitioner, for our consideration. The certificate pertaining to SIRECL is being reproduced hereunder:-

"CA DE & Bose
in association with ASH Associates UK

8/2, Kiran Sankar Roy Road, 2nd Floor
Room no. 1 & 18, Kolkata – 700 001
Ph.: 22485039. Fax: 91-33-2243-4864
E-mail: durgadas@cal3.vsnl.net.in

1, Garstin Place, Unit 1E, ORBIT,
Kolkata – 700 001. Phone: 2248 7424

TO WHOM IT MAY CONCERN

We, M/s. DE & Bose, Chartered Accountants, Statutory Auditor of M/s. Sahara India Real Estate Corporation Limited, registered office at Sahara India Bhawan, 1, Kapoorthala Complex, Aliganj, Lucknow – 226024, have performed the following procedures in carrying out the Special Assignment:

1. We have examined books and records provided to us and also obtained the relevant information and explanation which to the best of our knowledge and belief were necessary to give this certificate.

2. We have relied upon the system and procedure of the company, books, records, documents, bank statements, clarifications, representations, information and statements made available to us and also done verification and scrutiny of the same.

Based on the above procedures and verification, we certify that M/s. Sahara Indian Real Estate Corporation Limited had subscription of Optionally Fully Convertible Debentures of approximately Rs.748.75 crores (covering 2,92,344 control numbers) through cheque. Further till March, 2013, Rs.1,151.02 crores (covering 6,70,677 control numbers) were paid to the Optionally Fully Convertible Debenture holders on account of redemption/pre-redemption through cheque.

For De & Bose
Chartered Accountants
Firm Regn. No. 302175E

Date: 31.01.2014
Place: Kolkata

Sd/-
(Subrata De)
Partner
Membership no. 054962"

(emphasis is ours)

The second certificate pertaining to SHICL is also being reproduced hereunder:-

"CA DE & Bose
in association with ASH Associates UK

8/2, Kiran Sankar Roy Road, 2nd Floor
Room no. 1 & 18, Kolkata – 700 001

Ph.: 22485039. Fax: 91-33-2243-4864
E-mail: durgadas@cal3.vsnl.net.in
1, Garstin Place, Unit 1E, ORBIT,
Kolkata – 700 001. Phone: 2248 7424

TO WHOM IT MAY CONCERN

We, M/s. DE & Bose, Chartered Accountants, Statutory Auditor of M/s. Sahara Housing Investment Corporation Limited, registered office at Sahara India Point, CTS-40 & 44, S.V. Road, Goregaon (West), Mumbai – 400 104, Maharashtra have performed the following procedures in carrying out the Special Assignment:

1. We have examined books and records provided to us and also obtained the relevant information and explanation which to the best of our knowledge and belief were necessary to give this certificate.

2. We have relied upon the system and procedure of the company, books, records, documents, bank statements, clarifications, representations, information and statements made available to us and also done verification and scrutiny of the same.

Based on the above procedures and verification, we certify that M/s. Sahara Housing Investment Corporation Limited had subscription of Optionally Fully Convertible Debentures of approximately Rs.324.62 crores (covering 91,970 control numbers) through cheque. Further till March, 2013, Rs.14.66 crores (covering 10,501 control numbers) were paid to the Optionally Fully Convertible Debenture holders on account of redemption/pre-redemption through cheque.

For De & Bose
Chartered Accountants
Firm Regn. No. 302175E

Date: 31.01.2014
Place: Kolkata

Sd/-
(Subrata De)
Partner
Membership no. 054962"

(emphasis is ours)

A perusal of the above certificates reveals, that the above firm of Chartered Accountants, confirmed the redemption of OFCD's which were made by way of cheque only. Both the above certificates are silent on the redemptions made by way of cash. The firm of Chartered Accountants, therefore, did not choose to confirm the redemption of OFCD's made by way of cash. This action must be deemed to be conscious, otherwise it

was not necessary even to confirm the redemptions made by way of cheque. It was the clear contention of Mr. S. Ganesh, learned Senior Counsel before us, that approximately 95% of the OFCD's were refunded by cash, and only 5% of the OFCD's were refunded by way of cheques. Even if the certificates issued by the firm of Chartered Accountants were to be accepted to be correct (even though there seems to be no justifiable basis for the same), the authenticity of the general ledger entries was expressly only in respect of payments made by the two companies, by way of cheque. There is no authenticity whatsoever, in respect of payments made by way of cash. It is, therefore, not possible for us, on the basis of the record made available to us to accept, that any relevant material had been made available to us till date. We wish to express, that no other record, besides the above general ledger entries, was brought to our notice, to demonstrate the factum of alleged redemptions. Therefore, even a *prima facie* finding cannot be recorded, that the two companies had made available to this Court, any relevant material, wherefrom an inference could be drawn, that any redemption had ever been made to the investors, i.e., to the OFCD holders.

120. We have examined the above issue of redemptions only for the petitioner's satisfaction. As a matter of law, it does not lie in the mouth of the contemnors, to agitate the issue of redemption. Insofar as the instant aspect of the matter is concerned, it is necessary to highlight the fact, that the order dated 31.8.2012 directed the two companies, to deposit with the

SEBI, the entire redeemable amount along with interest at the rate of 15%. The above deposit had to be made within a period of three months, i.e., by 30.11.2012. The case set up by the two companies has been, that SIRECL had already refunded Rs.17,443 crores to the investors, and SHICL had likewise refunded Rs.5,442 crores. The two companies therefore assert, that they cannot be required to make the same payment to the investors, for the second time. It would be pertinent to mention, that the two companies had approached this Court by filing Civil Appeal no. 8643 of 2012 (and Writ Petition (Civil) no. 527 of 2012). In the said proceedings, the two companies had sought exemption from depositing the amounts, which they had allegedly redeemed. The three-Judge Division Bench, which heard the matter(s), did not accept the redemption theory projected by the two companies. Accordingly, the prayer made by the two companies in Civil Appeal no.8643 of 2012 (and Writ Petition (Civil) no. 527 of 2012) for deduction of the above amount, was not accepted by this Court, when it passed the final order dated 5.12.2012. Accordingly, the companies were directed to deposit the entire balance amount of Rs.17,400 crores. It is, therefore imperative to conclude, that the issue of deduction of allegedly redeemed funds, stood concluded against the two companies, when this Court passed its order dated 5.12.2012. This plea is no longer available to the two companies, in law. To continue to harp on the alleged redemptions, is clearly a misrepresentation, specially when the order dated 5.12.2012 has attained finality.

121. Therefore, viewed from any angle, there is no substance in the contention advanced on behalf of the two companies, that the moneys payable to the investors had been refunded to them. Accordingly, there is no merit in the prayer, that while making payments in compliance with this Court's orders dated 31.8.2012 and 5.12.2012, the two companies were entitled to make deductions of Rs.17,443 crores (insofar as SIRECL is concerned) and Rs.5,442 crores (insofar as SHICL is concerned). Be that as it may, we have still retained a safety valve, inasmuch as, the SEBI has been directed to examine the authenticity of the documents produced by the two companies, and in case the SEBI finds, that redemptions have actually been made, the two companies will be refunded the amounts, equal to the redemptions found to have been genuinely made.

122. We are persuaded to record, that either the submissions made to this Court on the subject of refunds made by the two companies were false; or the present projection of the two companies of their inability to pay the investors is false. One learned Senior Counsel for the petitioner, Mr. S. Ganesh, during the course of his narration, in order to substantiate the redemption of OFCD's to the tune of thousands of crores of rupees, referred to the collection of thousands of crores of rupees in successive months, during the year 2012, from the account books of the two companies. On a single day (31.5.2012), the cash inflow is shown as Rs.15,535,89,65,601.00 (i.e. more than Rupees fifteen thousand five hundred and thirty five crores). This was done by collecting funds from all

companies (and firms, under the conglomerate) of the Sahara Group. If it was possible to do that, at that juncture, in order to redeem the payments claimed by investors, we fail to understand why the same cannot be done now. Specially when, as already noticed hereinabove, the book value/market value of the properties of the Sahara Group conglomerate, is to the tune of Rs.1,52,500 crores (as per its own website). It is after all, close to 2 years (about 20 months) since the order dated 31.8.2012 was pronounced, and close to 1½ years (about 17 months) since the order dated 5.12.2012 was passed.

X. The maintainability of the present petition

123. At the very commencement of hearing, Mr. Arvind Datar, learned Senior Counsel representing the SEBI, raised a preliminary objection. He contested the very maintainability of the instant petition. He invited our attention to the heading of the petition, which is extracted hereunder:

> "PETITION UNDER THE POWERS OF THIS COURT TO ACT EX DEBITO JUSTITIAE A POWER EXPRESSLY RECOGNIZED BY THE AUTHORITIES MENTIONED IN THE PARA 'A' OF THIS PETITION."

It was his vehement contention, that the instant petition does not disclose the provisions under which it had been filed. In this behalf, it was sought to be asserted, that the right to maintain a petition can only emerge from a statutory provision, or a constitutional mandate. It was also submitted that neither a maxim of law, nor a decision of a Court, could create jurisdiction in a Court.

124. The objection of jurisdiction, raised by the learned Senior Counsel representing the SEBI, met with the strangest possible response from the learned Senior Counsel representing the petitioner. It was a response of a nature which we had not experienced in our professional careers as Advocates, or even in approximately one and a half decades of service rendered as Judges. It is necessary to point out, that when the above objection was raised, we had informed learned Senior Counsel representing the SEBI, that we would not stand on technicality, inasmuch as, if the instant petition was maintainable under one or the other provision of law, we would read that provision in the title of the present petition, even though the same had not been expressly mentioned therein.

125. When confronted with the objection of maintainability, Mr. Ram Jethmalani, learned Senior Counsel, adopted the positive stance, that there was no deficiency in the title of the petition. In his view, the instant petition was maintainable under the maxim of *ex debito justitiae*, a power which has been expressly recognized by this Court in A.R. Antulay's case (supra). The decision in A.R. Anulay's case (supra) was rendered by a Constitution Bench of seven Hon'ble Judges of this Court. According to Mr. Ram Jethmalani, in the above judgment, the proposition canvassed by him, had been upheld by a majority of 5:2. He pointedly asserted, that we should record his submission to the effect, that he had ever contended that the instant petition was maintainable either under Article 32 of the Constitution of India, or jointly under Articles 129 and 142 of the

Constitution of India. In fact he submitted, that he had authored the present criminal writ petition. And in the process, he had extensively researched on the issue of jurisdiction, before filing this petition. His unambiguous assertion on the subject of jurisdiction was, that the petition had not been filed under a legislative enactment of the Constitution of India. It has been filed under the maxim *ex debito justitiae*.

126. In contradistinction to the submissions advanced at the hands of Mr. Ram Jethmalani, Mr. C.A. Sundaram, learned Senior Counsel, who also represented the petitioner, invited our attention to the prayers made in the instant petition. To understand the tenor of his submission, the prayers made in the petition are being extracted hereunder:

"PRAYER

It is therefore most graciously prayed that this Hon'ble Court may be pleased to:-

(a) Declare the order dated 04.03.2014 as void, nullity and non-est in the eyes of law;

(b) Declare that the incarceration and the custody of the Petitioner are illegal which should be terminated forthwith;

(c) issue such other writ in the nature of Habeas or other writs, order or direction for release of the Petitioner from the illegal custody;

(d) pass such further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

Referring to prayer (a) extracted above, it was submitted, that the declaration sought in the instant prayer would be in the nature of a writ of certiorari. Referring to clause (b) of the prayer clause, it was contended, that the declaration sought therein would be in the nature of a writ of

certiorarified mandamus. Insofar as prayer clause (c) is concerned, it was asserted, that the prayer sought was in the nature of a writ of habeas corpus. In the above view of the matter, it was the submission of Mr. C.A. Sundaram, that the jurisdiction of this Court to issue writs, could be invoked only under Article 32 of the Constitution of India. As such, it was his submission, that the instant petition be treated as having been filed under Article 32 of the Constitution of India. In other words, the contention of Mr. C.A. Sundaram, learned Senior Counsel was, that the title of the petition be read by including Article 32 of the Constitution of India therein. In fact, it was the pointed submission of the learned counsel, that he should not be taken as having canvassed, that the instant petition was maintainable on account of the jurisdiction evolved through the judgment rendered by this Court in A.R. Antulay's case (supra). He also contended, that he should not be taken to have canvassed, that the present petition is maintainable under Article 129 read with Article 142 of the Constitution of India.

127. Dr. Rajeev Dhawan, was yet another learned Senior Counsel, who represented the petitioner. His candid contention was, that he could not accept the submissions on the subject of jurisdiction, as had been canvassed by his colleagues, Mr. Ram Jethmalani and Mr. C.A. Sundaram. It was his assertion, that the prayers made in the instant petition could be sought by the petitioner, only under Articles 129 and 142 of the Constitution of India. As such, he submitted that the title of this

petition be read by including therein, Articles 129 and 142 of the Constitution of India.

128. It is apparent from the submissions advanced at the hands of the learned counsel for the petitioner, that even learned counsel representing the petitioner, were not sure about the maintainability of the instant petition. Each of them while adopted an independent stance, and was unwilling to accept the position adopted by his other two colleagues. In the above view of the matter, we would have been happy to follow a simple course. To reject the petition's maintainability, on the basis of the majority view, expressed by the learned counsel representing the petitioner himself. Such rejection would be, by a majority of 2:1. Learned counsel were probably independently conscious of the legal position, that the petition was not maintainable. Unfortunately, this course is not open to a Court of law. We will have to examine the maintainability of the petition, by taking into consideration all the perspectives presented before us. The burden will naturally be three-folds than the usual. However, keeping in mind the eminence of the learned Senior Counsel who represented the petitioner, it is not possible for us, at first blush, to draw any such inference. We shall endeavour to independently determine the issue of maintainability, canvassed at the hands of all the learned counsel representing the petitioner. In case we arrive at the conclusion, that the submission of any one of the learned counsel is acceptable, we would treat the instant petition as maintainable.

129. First and foremost, on the subject of maintainability, we shall determine the veracity of the submissions advanced at the hands of Mr. Ram Jethmalani, Senior Advocate. To substantiate his contention learned counsel placed reliance, only on the judgment rendered by this Court in A.R. Antulay's case (supra). Before examining the decision rendered by this Court in the above judgment, we shall summarise the factual context, in which the aforesaid judgment was rendered. The appellant in the above case, A.R. Antulay was the Chief Minister of the State of Maharashtra from 1980 to 1982. R.S. Nayak belonged to a rival political party. R.S. Nayak filed a complaint before the Additional Metropolitan Magistrate, Bombay, under Sections 161 and 165 of the Indian Penal Code and Section 5 of the Prevention of Corruption Act, as also, under Sections 384 and 420 read with Sections 109 and 120-B of the Indian Penal Code. The complaint was not only against the appellant A.R. Antulay, but also against other known and unknown persons. Since sanction for prosecution had not been granted, the concerned Magistrate refused to take cognizance. To assail the order of the Magistrate, a criminal revision application came to be filed. In the meantime, the Governor of the State of Maharashtra accorded sanction. R.S. Nayak thereupon, filed a fresh complaint in the Court of the Special Judge, Bombay, alleging the commission of the same offences, which were the subject matter of the complaint earlier filed by him, before the Magistrate. The Special Judge, Bombay, issued summons to the appellant – A.R. Antulay. On entering appearance A.R. Antulay adopted the stance, that the Special Judge, Bombay, had no jurisdiction to entertain

the complaint. For the aforesaid objection, he placed reliance on Section 7 of the Criminal Law Amendment Act, 1952. He also asserted, that cognizance could not be taken by the above Court, on the basis of a private complaint. The Special Judge, Bombay, overruled the objections raised by A.R. Antulay, and listed the matter for recording evidence of the complainant's witnesses. The aforesaid order of the Special Judge, Bombay, was assailed by A.R. Antulay, by filing a criminal revision petition, before the Bombay High Court. The said petition was dismissed. The order of the High Court was then assailed before this Court. This Court granted special leave to A.R. Antulay, on the issue as to whether, a private complaint was maintainable. In the meantime, an objection was raised by A.R. Antulay before the Special Judge, Bombay, to the effect, that he could not be prosecuted without sanction of the competent authority. His instant plea was based on the fact, that he still continued to be a Member of the Legislative Assembly, and as such, sanction was an essential pre-condition, before his prosecution. The above plea, was accepted by the Special Judge, Bombay. R.S. Nayak, then filed a criminal revision petition before the High Court, questioning the above order. The High Court upheld the order passed by the Special Judge, Bombay. R.S. Nayak then approached this Court. This Court granted special leave, against the decision of the High Court, holding that sanction was necessary before A.R. Antulay could be prosecuted. The aforesaid Criminal Appeals were heard by a five-Judge Constitution Bench of this Court. Even though, the same Bench heard the matters, the two appeals were disposed of by two

separate judgments. The appeal preferred by R.S. Nayak was accepted. This Court held, that as a Member of the Legislative Assembly, A.R. Antulay was not a public servant, and therefore, no sanction was required for his prosecution. In the above view of the matter, it is apparent, that this Court set aside the order of discharge passed by the Special Judge, Bombay. This Court accordingly directed the trial Court, to proceed with the trial of the matter. While disposing of the two cases referred to hereinabove, this Court having taken into consideration the fact, that A.R. Antulay had already suffered adversely, as his reputation was tarnished by the imputations levelled against him, for a period of two and a half years (i.e., the period during which the controversy had remained pending), felt that he deserved an expeditious trial. In the aforesaid view of the matter, while disposing of the two matters referred to above, this Court directed, that the cases filed against A.R. Antulay before the Special Judge, Bombay, be withdrawn and be transferred to the High Court of Bombay for trial. The Chief Justice of the High Court of Bombay was also requested, to assign the trial of the matter, to a sitting Judge of the High Court, so as to conclude the matter by holding day-to-day proceedings. Accordingly, trial commenced before a Single Judge of the High Court of Bombay in 1984. A.R. Antulay again contested the maintainability of the trial proceedings, before the High Court of Bombay. The learned Single Judge hearing the matter, rejected the plea canvassed at the hands of A.R. Antulay by concluding, that the High Court was bound by the order passed by this Court. In the above circumstances, A.R. Antulay filed a writ petition

before this Court, under Article 32 of the Constitution of India. A two-Judge Division Bench of this Court, dismissed the petition. Whilst one of the Judges expressed the view, that the learned Single Judge of the Bombay High Court was not only justified, but was also duty bound to follow the decision of this Court, which was binding on him; the second Judge on the Bench expressed the view, that the challenge raised by the petitioner (by assailing the validity of the judgment rendered by this Court, as incorrect or a nullity) could not be entertained. The second Hon'ble Judge, therefore, granted liberty to A.R. Antulay, to approach this Court with an appropriate review petition, if the petitioner – A.R. Antulay was so advised. Having examined the witnesses produced by R.S. Nayak before the learned Single Judge of the High Court, 21 charges came to be framed (out of 43 draft charges, which were placed before the Court, for its consideration) against A.R. Antulay. At the instance of the rival parties, the matter again came to this Court, for determining the validity of the order framing only 21 charges. In the judgment rendered by this Court in A.R. Antulay's case (supra), this Court held, on facts, that a *prima facie* case had also been made out against A.R. Antulay, in respect of some of the allegations, in furtherance whereof no charges had been framed. This Court accordingly, set aside the order of the High Court refusing to frame charges, in respect of some of the alleged offences, on which A.R. Antulay had been discharged. Thereupon, the learned Single Judge of the High Court framed 79 charges against A.R. Antulay. The High Court simultaneously rejected the application made by A.R. Antulay, for

proceeding against the alleged co-conspirators. A.R. Antulay, then challenged the aforesaid order of the High Court before this Court. He, *inter alia,* questioned the High Court's jurisdiction to try the case. He alleged that his trial by the Single Judge of the High Court, was in violation of Articles 14 and 21 of the Constitution of India. The contention advanced on behalf of A.R. Antulay was, that he could be tried only in accordance with the procedure established by law. This plea was raised under Article 21 of the Constitution of India. A.R. Antulay relied on Section 7(1) of the Criminal Law Amendment Act, 1952, which expressly provided (notwithstanding anything contained in the Code of Criminal Procedure or any other law), that the offences under Section 6(1) would be triable by a Special Judge only. It was, therefore, sought to be asserted, that his trial by the Single Judge of the High Court, was in clear violation of his constitutional rights, and the aforesaid legislative mandate. A.R. Antulay alleged prejudice by asserting, that four of his valuable rights had been taken away when this Court had passed the direction, whereby his trial was withdrawn from the Court of the Special Judge, Bombay, and transferred to the High Court. In this behalf, it was his contention, that he was deprived of the right to trial by a Special Judge, in accordance with the procedure established by law, i.e., procedure which had been enacted by Parliament. He also asserted, that his right of revision to the High Court under Section 9 of the Criminal Law Amendment Act, 1952, had been taken away. It was also his submission, that had the Special Judge, Bombay conducted his trial, he would have had a right of first appeal, to

the High Court. The above right which was vested in him under Section 9 of the Criminal Law Amendment Act, 1952, was also allegedly taken away. He also asserted, that under the provisions of the Criminal Law Amendment Act, 1952, besides preferring an appeal to the High Court, he would have a right of a second appeal before this Court under Article 136 of the Constitution of India. It was his contention, that the right to prefer a second appeal, was also sought to be taken away from him. Besides, alleging the deprivation of the above valuable rights, it was also the contention of A.R. Antulay before this Court, that this Court had *suo motu* directed withdrawal of the case against A.R. Antulay from the Special Judge, Bombay, and transferred the same to the High Court without affording any opportunity of hearing to him. It was, therefore, sought to be asserted, that the above order passed by the High Court, was clearly in violation of the principles of natural justice, and accordingly, the same violated his fundamental rights, causing grave prejudice to him, and therefore, deserved to be set aside.

130. From the judgment rendered by this Court in A.R. Antulay's case (supra), Mr. Ram Jethmalani relied upon the following observations:-

> "79. ...<u>These directions were void because the power was not there for this Court to transfer a proceeding under the Act of 1952 from one Special Judge to the High Court. This is not a case of collateral attack on judicial proceeding; it is a case where the court having no court superior to it rectifies its own order. We recognise that the distinction between an error which entails absence of jurisdiction and an error made within the jurisdiction is very fine</u>. So fine indeed that it is rapidly being eroded as observed by Lord Wilberforce in Anisminic Ltd. v. Foreign Compensation Commissioner, (1969) 1 All E.R. 208. Having regard to the enormity

of the consequences of the error to the appellant and by reason of the fact that the directions were given suo motu, we do not find there is anything in the observations of Ittavira Mathai v. Varkey Varkey (1964) 1 SCR 495 which detract the power of the court to review its judgment *ex debito justitiae* in case injustice has been caused. No court, however high, has jurisdiction to give an order unwarranted by the Constitution and, therefore, the principles of Bhatia Co- operative Housing Society Ltd. v. D. C. Patel, (1953) SCR 185, would not apply.

80. In giving the directions this Court infringed the constitutional safeguards granted to a citizen or to an accused and injustice results therefrom. It is just and proper for the court to rectify and recall that injustice, in the peculiar facts and circumstances of this case.

81. This case has caused us considerable anxiety. The appellant-accused has held an important position in this country, being the Chief Minister of a premier State of the country. He has been charged with serious criminal offences. His trial in accordance with law and the procedure established by law would have to be in accordance with the 1952 Act. That could not possibly be done because of the directions of this Court dated February 16, 1984, as indicated above. It has not yet been found whether the appellant is guilty or innocent. It is unfortunate, unfortunate for the people of the State, unfortunate for the country as a whole, unfortunate for the future working of democracy in this country which, though is not a plant of an easy growth yet is with deep root in the Indian polity that delay has occurred due to procedural wrangles. The appellant may be guilty of grave offences alleged against him or he may be completely or if not completely to a large extent, innocent. Values in public life and perspective of these values in public life, have undergone serious changes and erosion during the last few decades. What was unheard of before is commonplace today. A new value orientation is being undergone in our life and in our culture. We are at the threshold of the cross-roads of values. It is, for the sovereign people of the country to settle these conflicts yet the courts have vital roles to play in such matters. With the avowed object of speedier trial the case of the appellant had been transferred to the High Court but on grounds of expediency of trial he cannot be subjected to a procedure unwarranted by law, and contrary to the constitutional provisions. The appellant may or may not be an ideal politician. It is a fact, however, that the allegations have been brought against him by a person belonging to a political party opposed to his but that is not the decisive factor. If the appellant - Shri Abdul Rehman Antulay has infringed law, he must be dealt with in accordance with the law. We proclaim and pronounce that no man is above the law, but at the same time

> reiterate and declare that no man can be denied his rights under the Constitution and the laws. He has a right to be dealt with in accordance with the law and not in derogation of it. This Court, in its anxiety to facilitate the parties to have a speedy trial gave directions on February 16, 1984 as mentioned hereinbefore without conscious awareness of the exclusive jurisdiction of the Special Courts under the 1952 Act and that being the only procedure established by law, there can be no deviation from the terms of Article 21 of the Constitution of India. That is the only procedure under which it should have been guided. By reason of giving the directions on February 16, 1984 this Court had also unintentionally caused the appellant the denial of rights under Article 14 of the Constitution by denying him the equal protection of law by being singled out for a special procedure not provided for by law. When these factors are brought to the notice of this Court, even if there are any technicalities this Court should not feel shackled and decline to rectify that injustice or otherwise the injustice noticed will remain forever a blot on justice. It has been said long time ago that "actus curiae neminem gravabit" - an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense and affords a safe and certain guide for the administration of the law.
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> 83….It appears that in giving directions on February 16, 1984, this Court acted *per incuriam* inasmuch it did not bear in mind consciously the consequences and the provisions of Sections 6 and 7 of the 1952 Act and the binding nature of the larger Bench decision in *Anwar Ali Sarkar case*, 1952 SCR 284 which was not adverted to by this Court. The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. *Ex debito justitiae*, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied. This is a peculiar fact of this case which requires emphasis."
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> (emphasis is ours)

Based on the above parameters recorded in A.R. Antulay's case (supra), Mr. Ram Jethmalani, learned Senior Counsel vehemently contended, that the maxim of *actus curiae neminem gravabit*, meaning, the act of a Court will not prejudice any man, is founded on the principle of justice and good

conscience. The above principle affords a safe and certain guide for the administration of law. It was pointed out, that Courts in England abide by the principle, that the size of the Bench did not make any difference for the adjudication of a controversy. It was submitted, that the aforesaid concept was not valid in this country. We were informed, that the law laid down by this Court established a hierarchy within this Court itself, whereby decisions of a larger Bench binds a smaller Bench. It was submitted, that a larger Bench can override the decision of a smaller Bench. It was, therefore pointed out, that when this Court in A.R. Antulay's case (supra) examined the validity of the order passed by this Court, whereby the trial pending before the Special Judge, Bombay under the Criminal Law (Amendment) Act, 1952, was transferred to the High Court, a Constitution Bench of this Court declared the above transfer order as being void and a nullity in law. It was submitted, that if the above determination could be rendered, the controversy in hand needs to be similarly redressed, so as to do justice to the petitioner. It was submitted, that the principle of *actus curiae neminem gravabit* would apply with much greater force in the present case on account of the fact, that the petitioner has been deprived of his liberty and has been remanded to jail without the authority of law. It was submitted, that the impugned order dated 4.3.2014 was totally unjust, without any judgment of conviction, without proper charges being framed or notice issued, and without a hearing. It was also the contention of the learned Senior Counsel, that the principle of *audi alteram partem* was given a complete go-by, in the facts and circumstances of this case. It was

accordingly the submission of the learned Senior Counsel for the petitioner, that even a judicial order passed in derogation of the constitutional limitations or in derogation of principles of natural justice, can always be remedied by this Court *ex debito justitiae*. According to learned counsel, it was imperative for this Court to exercise the above power without insisting on the formalities of the petitioner being required to file a review petition or a curative petition.

131. In addition to the reliance placed by the learned Senior Counsel for the petitioner on the judgment rendered by this Court in A.R. Anutlay's case (supra), he also placed reliance on the judgments of this Court in Supreme Court Bar Association's case (supra), and on M.S. Ahlawat v. State of Haryana & Anr., (2000) 1 SCC 278, wherein this Court had recalled its own order, when a litigant had approached it complaining of miscarriage of justice (through an earlier order, passed by this Court). Specially when the earlier order was without jurisdiction and without following due procedure of law. And specially, when the challenged order had resulted in the incarceration of the concerned petitioner.

132. In response to the contentions advanced at the hands of the learned Senior Counsel for the petitioner, Mr. Arvind Datar, learned Senior Counsel representing the SEBI, invited our attention to the following observations made in A.R. Antulay's case (supra):-

> "107. There is still another aspect which should be taken note of. Finality of the orders is the rule. By our directing recall of an order the well settled propositions of law would not be set at naught. Such a situation may not recur in the ordinary course of judicial functioning

> and if there be one certainly the Bench before which it comes would appropriately deal with it. No strait-jacket formula can be laid down for judicial functioning particularly for the apex Court. The apprehension that the present decision may be used as a precedent to challenge judicial orders of this Court is perhaps misplaced because those who are familiar with the judicial functioning are aware of the limits and they would not seek support from this case as a precedent. We are sure that if precedent value is sought to be derived out of this decision, the court which is asked to use this as an instrument would be alive to the peculiar facts and circumstances of the case in which this order is being made."
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> (emphasis is ours)

Based on the above, it was submitted by the learned counsel, that challenge to an order passed by this Court would be a rarity, and not a common feature. He emphatically pointed out, that if the submission advanced at the hands of the learned counsel for the petitioner was to be accepted, no order passed by this Court would ever attain finality. And therefore, the jurisdiction of this Court would be open to exploitation, any number of times, if the petitioner/respondent continued to feel, that injustice had been done to him.

133. We are of the view, that reliance by the learned Senior Counsel for the petitioner on Supreme Court Bar Association's case (supra) and on M.S. Ahlawat's case (supra) is wholly misconceived on account of the determination rendered by this Court in Rupa Ashok Hurra's case (supra), wherein in paragraph 13, a five-Judge Constitution Bench, observed as under:-

> "13. It is, however, true that in Supreme Court Bar Association vs. Union of India, (1998) 4 SCC 409, a Constitution Bench and in M.S. Ahlawat vs. State of Haryana, (2000) 1 SCC 278, a three-Judge Bench, and in other cases different Benches quashed the earlier judgments/orders of this Court in an application filed under Article 32 of the Constitution. But in those cases no one joined issue with

regard to the maintainability of the writ petition under Article 32 of the Constitution. Therefore, those cases cannot be read as authority for the proposition that a writ of certiorari under Article 32 would lie to challenge an earlier final judgment of this Court."

(emphasis is ours)

134. Before we advert to the question of jurisdiction, it may be relevant to understand the extent and width of jurisdiction within the framework whereof this Court can pass orders. In this behalf reference may be once again, made to the nine-Judge Bench judgment of this Court in Naresh Sridhar Mirajkar's case (supra), wherein it was held as under:-

"60. There is yet another aspect of this matter to which it is necessary to refer. The High Court is a superior Court of Record and under Article 215, shall have all powers of such a Court of Record including the power to punish contempt of itself. One distinguishing characteristic of such superior Courts is that they are entitled to consider questions of their jurisdiction raised before them. This question fell to be considered by this Court in Special Reference No. 1 of 1964, (1965) 1 S.C.R. 413 at p. 499. In that case, it was urged before this Court that in granting bail to Keshav Singh, the High Court had exceeded its jurisdiction and as such, the order was a nullity. Rejecting this argument, this Court observed that in the case of a superior Court of Record, it is for the Court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction. That is why this Court did not accede to the proposition that in passing the order for interim bail, the High Court can be said to have exceeded its jurisdiction with the result that the order in question was null and void. In support of this view, this Court cited a passage from Halsbury's Laws of England where it is observed that:-

> "prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular Court." (Halsbury's Laws of England, Vol. 9, p. 349).".

If the decision of a superior Court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law; but until the adjudication by a

> superior Court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by the exercise of the writ jurisdiction of this Court."
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> (emphasis is ours)

135. Since it is not the case of the petitioner before this Court, that some legislative or constitutional provision had curtailed the jurisdiction of this Court, from passing an order, of the nature which is impugned through this criminal writ petition, there can be no doubt that the above order has been passed by this Court in legitimate exercise of its jurisdiction. This will have to be the natural determination arising out of the law declared in Naresh Sridhar Mirajkar's case (supra), which is the very judgment, on which learned counsel for the petitioner has placed reliance.

136. Independently of the above purely legal determination, we have under a separate heading examined the issue, whether this Court had the jurisdiction to order the arrest and detention of the petitioner – Mr. Subrata Roy Sahara. We have independently concluded, that we were possessed of such jurisdiction. It is therefore apparent, that the impugned order dated 4.3.2014, does not suffer from any jurisdictional error.

137. We are in absolute agreement with the submissions advanced by Mr. Arvind Datar, learned Senior Counsel for the respondent. In view of the factual position depicted in this judgment (under the heading: "Whether the impugned order dated 4.3.2014 was passed, in violation of the rules of natural justice?"), based on the pleas advanced by the petitioner on merits, it is apparent, that the rules of natural justice were followed to the hilt,

before the impugned order dated 4.3.2014 was passed. Accordingly, the principle of *actus curiae neminem gravabit* is not available to the petitioner.

138. We have recorded hereinabove, that the instant petition is not maintainable, because the challenge raised by the petitioner herein, on the grounds of a jurisdictional error, or non compliance of the rules of natural justice have been found to be not made out in this case. That was the only basis of interference in Naresh Sridhar Mirajkar's case (supra). We are however persuaded, to record another reason for not accepting the maintainability of the present writ petition, on the basis of Naresh Sridhar Mirajkar's case (supra). In this behalf it is relevant to notice, from the factual background of Naresh Sridhar Mirajkar's case (supra) which has been traced hereinabove, that A.R. Antulay, had earlier approached this Court, by filing a writ petition under Article 32 of the Constitution of India (just in the same manner, as the petitioner herein has approached this Court). A two-Judge Division Bench of this Court dismissed the petition by observing *inter alia*, that a writ petition challenging the validity of an order and judgment passed by the Supreme Court as nullity or otherwise incorrect, could not be entertained. The said writ petition was accordingly dismissed (Abdul Rehman Antulay v. Union of India, Writ Petition (Criminal) no. 708 of 1984, decided on 17.4.1984; reported as Appendix, (1988) 2 SCC 764). In the above view of the matter also, even on the basis of the very judgment relied upon by the learned counsel, we have no other alternative but to conclude, that the instant writ petition is not

maintainable, to assail the impugned order passed by this Court on 4.3.2014.

139. We shall now endeavour to deal with the submissions advanced at the hands of Mr. C.A. Sundaram, learned Senior Counsel appearing for the petitioner, whose express submission was, that the instant criminal writ petition, filed by the petitioner was maintainable under Article 32 of the Constitution of India. The sum and substance of the submission advanced by the learned counsel, has already been noticed above, and is accordingly not being repeated herein again, for reasons of brevity. Before dealing with the issue in hand, it would also be relevant to mention, that while the long drawn hearing in the instant matter was coming to an end, Mr. Ram Jethmalani, learned Senior Counsel, had a slight change of heart. His submission on second thoughts was, that the contention advanced at the hands of Mr. C.A. Sundaram, learned Senior Counsel, to the effect that the instant petition was maintainable under Article 32 of the Constitution of India, had merit. In the succeeding paragraphs, we shall deal with the submissions advanced by Mr. C.A. Sundaram, to demonstrate that the present writ petition was maintainable at the hands of the petitioner, to assail the order passed by us, on 4.3.2014.

140. The instant issue being a pure question of law, was canvassed at the hands of the learned counsel for the rival parties, by placing reliance on judgments rendered by this Court. In our considered view, therefore, it

would be in the fitness of matters to cite the judgments relied upon by the learned counsel for the parties, for the adjudication of the instant issue.

141. We have chosen to take into consideration various judgments brought to our notice chronologically.

(i) In this behalf reference may first and foremost be made to the judgment rendered by a nine-Judge Bench of this Court in Naresh Shridhar Mirajkar, AIR 1967 SC 1, wherefrom our attention was invited to the following conclusions drawn therein:-

> "52. In this connection, it is necessary to refer to another aspect of the matter, and that has relation to the nature and extent of this Court's jurisdiction to issue writs of certiorari under Article 32(2). Mr. Setalvad has conceded that if a Court of competent jurisdiction makes an order in a proceeding before it, and the order is inter-parties, its validity cannot be challenged by invoking the jurisdiction of this Court under Article 32, though the said order may affect the aggrieved party's fundamental rights. His whole argument before us has been that the impugned order affects the fundamental rights of a stranger to the proceedings before the Court; and that, he contends, justifies the petitioners in moving this Court under Article 32. It is necessary to examine the validity of this argument.
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> 59. We have referred to these decisions to illustrate how the jurisdiction to issue writs if certiorari has been exercised either by the High Courts under Article 226 or by this Court under Article 32. Bearing these principles in mind, let us enquire whether the order impugned in the present proceedings can be said to be amenable to the jurisdiction of this Court under Article 32. We have already seen that the impugned order was passed by the learned Judge after hearing the parties and it was passed presumably because he was satisfied that the ends of justice required that Mr. Goda should be given protection by prohibiting the publication of his evidence in the newspapers during the course of the trial. This matter was directly related to the trial of the suit; and in exercise of his

> inherent power, the learned Judge made the order in the interests of justice. The order in one sense is inter-parties, because it was passed after hearing arguments on both the sides. In another sense, it is not inter-parties inasmuch as it prohibits strangers like the petitioners from publishing Mr. Goda's evidence in the newspapers. In fact, an order of this kind would always be passed after hearing parties before the Court and would in every case affect the right of strangers like the petitioners who, as Journalists, are interested in publishing court proceedings in newspapers. Can it be said that there is such a difference between normal orders passed inter-parties in judicial proceedings, and the present order that it should be open to the strangers are who affected by the order to move this Court under Article 32? The order, no doubt, binds the strangers; but, nevertheless, it is a judicial order and a person aggrieved by it, though a stranger, can move this Court by appeal under Article 136 of the Constitution. Principles of Res judicata have been applied by this Court in dealing with petitions filed before this Court under Article 32 in Daryao v. The State of U.P. and Others, AIR 1961 SC 1457. We apprehend that somewhat similar considerations would apply to the present proceedings. If a judicial order like the one with which we are concerned in the present proceedings made by the High Court binds strangers, the strangers may challenge the order by taking appropriate proceedings in appeal under Article 136. It would, however, not be open to them to invoke the jurisdiction of this Court under Article 32 and contend that a writ of certiorari should be issued in respect of it. The impugned order is passed in exercise of the inherent jurisdiction of the Court and its validity is not open to be challenged by writ proceedings."
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> (emphasis is ours)

Even though the challenge before us is raised on account of the alleged violation of Article 21 of the Constitution of India, yet the issue that needs to be determined is, whether a writ petition would be maintainable, as against an order passed by this Court for an alleged violation of a fundamental right. While examining the above proposition in respect of an alleged violation under Article 19 of the Constitution of India, this Court in the conclusions drawn in the

above extracted paragraphs, clearly held, that a writ petition would not be maintainable against an order passed by this very Court, even though it alleged violation of a fundamental right.

(ii) Reference was next made to the decision rendered by a three-Judge Division Bench of this Court in Col. Dr. B. Ramachandra Rao v. The State of Orissa & Ors., (1972) 3 SCC 256. Even though during the course of hearing, learned counsel for the rival parties read before us paragraphs 5 and 7 of the present judgment, we are of the view that for the issue in hand, the purpose would be served by extracting herein paragraph 6, which is being reproduced hereunder:-

> "6. As admitted by both sides the petitioner was sentenced to imprisonment on conviction by the Third Additional Sessions Judge, Secunderabad in October, 1965. Unfortunately, neither side has been able to inform us as to whether that sentence has expired or is still running. The jail authorities at Bhubaneshwar, we have little doubt, must have information whether or not the petitioner, when brought there, was undergoing a sentence of imprisonment and how much sentence remain to be undergone, and the petitioner also, in our opinion, must be presumed to be aware of the sentence imposed on him. We need only add that in case the petitioner is undergoing the sentence of imprisonment imposed on him by competent Court then too writ of habeas corpus cannot be granted. This position is well settled."
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> (emphasis is ours)

A perusal of the above judgment leaves no room for any doubt, that this Court clearly declared, that in case a Court of competent jurisdiction, had passed an order of imprisonment, the order could not be assailed by praying for a writ in the nature of *habeas corpus*. A writ of *habeas corpus* can only be sought from this Court, in

exercise of its jurisdiction under Article 32 of the Constitution of India. In the above view of the matter it is apparent from the conclusions drawn by this Court, that a writ petition was held to be not maintainable, against an order of imprisonment passed by a Court of competent jurisdiction.

(iii) A writ petition was filed in the Court, to assail the validity of a conviction order, whereby the person concerned had been sentenced to life imprisonment. This Court, in Jharia S/o Maniya v. State of Rajasthan & Anr., (1983) 4 SCC 7, held that the writ petition was not maintainable. Incidentally, it would be pertinent to mention, that the above challenge was raised (as in the instant case), by asserting that the impugned judgment violated the fundamental right of the concerned detenue, under Article 21 of the Constitution of India (as in the instant case). Additionally, a challenge was also raised under Articles 14 and 19 of the Constitution of India. This Court dismissed the writ petition, with the following observations:-

> "2. It appears that the petitioner along with two others was arraigned before the Sessions Judge of Alwar in Sessions Trial No. 110 of 1976 for having committed an alleged offence punishable under Section 302 of the Indian Penal Code, alternatively, under Section 302 read with Section 34 of the Code. By his finding and sentence dated April 21, 1977 the learned Sessions Judge convicted the petitioner and his two associates for having committed the murder of the deceased Jharia in furtherance of their common intention under Section 302 read with Section 34 and sentenced each of them to undergo imprisonment for life, while recording their acquittal under Section 302. On appeal, a Division Bench of the Rajasthan High Court (Jaipur Bench) in Criminal Appeal No. 219 of 1977 by judgment dated July 3, 1980 maintained the

conviction of the petitioner under Section 302 read with Section 34 but acquitted his two associates giving them the benefit of doubt. Dissatisfied with the judgment of the High Court, the petitioner applied to this Court for grant of special leave under Article 136 of the Constitution. The special leave petition was dismissed by this Court on February, 23, 1981. An application for review was also dismissed on November 19, 1981. Thereafter, the petitioner filed this petition under Article 32 assailing his conviction and sentence. The petitioner seeks the issuance of a writ of mandamus directing the State of Rajasthan to forbear from giving effect to the judgment and sentence passed by the learned Sessions Judge as also the judgment of the High Court as well as the order passed by this Court dismissing the special leave petition. He further seeks a declaration that his conviction under Section 302 read with Section 34 by the High Court was illegal and therefore his detention in jail was without the authority of law and in violation of Article 21 read with Articles 14 and 19 of the Constitution.

3. The petitioner contends that in view of the decisions of this Court in Krishna Govind Patil v. State of Maharashtra, AIR 1963 SC 1413, Maina Singh v. State of Rajasthan, AIR 1976 SC 1084 and Piara Sinnh v. State of Punjab, (1980) 2 SCC 401 , his conviction under Section 302 read with Section 34 was illegal as he had been charged with two other named persons who have been acquitted by the High Court and therefore he cannot be convicted of an offence punishable under Section 302 read with Section 34. Upon this basis, the contention is that the petitioner has been deprived of his life and liberty without the authority of law in violation of Article 21 read with Articles 14 and 19 of the Constitution. It is represented to us that the contention based upon the decisions of this Court had been advanced during the course of the hearing of the special leave petition, but both the special leave petition and the application for review have been dismissed and therefore the petitioner has no other remedy except to approach this Court for appropriate writ, direction or order under Article 32 of the Constitution.

4. We fail to appreciate the propriety of asking for a declaration in there proceedings under Article 32 that conviction of the petitioner by the High Court for an offence punishable under Section 302 read with Section 34 of the India Penal Code is illegal, particularly when this Court has declined to grant special leave under Article 136. Nor can the petitioner be heard to say that his detention in jail amounts to deprivation of the fundamental right to life and liberty without

> following the procedure established by law in violation of Article 21 read with Articles 14 and 19. When a special leave petition is assigned to the learned Judges sitting in a Bench, they constitute the Supreme Court and there is a finality to their judgment which cannot be upset in these proceedings under Article 32. Obviously, the Supreme Court cannot issue a writ, direction or order to itself in respect of any judicial proceedings and the learned Judges constituting the Bench are not amenable to the writ jurisdiction of this Court."
>
> (emphasis is ours)

A perusal of the above judgment, leaves no room for any doubt, that in the above judgment, rendered by a three-Judge Division Bench, this Court arrived at the conclusion, that a writ petition would not be maintainable to assail a judicial order.

(iv) Reference may now be made to the decision rendered by this Court in Ranjit Singh v. Union Territory of Chandigarh & Anr., (1991) 4 SCC 304. It would be relevant to mention, that the instant judgment was relied upon by Mr. Mukul Gupta, learned Senior Counsel, who represented the Union of India. The above judgment also dealt with the issue whether a writ petition was maintainable under Article 32 of the Constitution of India, to assail the directions contained in a judgment rendered by this Court. From the above judgment, the observations recorded in paragraphs 5 and 11 are considered essential for the purpose in hand, and are accordingly being extracted hereunder:-

> "5. We may straightaway mention that the question of grant of relief under Article 32 of the Constitution does not arise on the above facts. The petitioner's incarceration is the result of a valid judicial order and therefore, there can be no valid claim to the infringement of any fundamental right which alone can be the foundation for a writ under Article 32 of the

> Constitution. The only question, it appears, therefore, is about the correct construction of the direction given by this Court in its judgment dated September 30, 1983 in Criminal Appeal No. 418 of 1982 in the light of the true meaning of Section 427(2) Cr.P.C.
>
> xxx xxx xxx xxx xxx
>
> 11. We have already stated that this petition for the issuance of a writ under Article 32 of the Constitution is untenable. We have, therefore, treated it as a petition for clarification of the judgment dated September 30, 1983 in Criminal Appeal No. 418 of 1982. Accordingly, the petition is disposed of with this clarification."
>
> (emphasis is ours)

Yet again, in the above judgment, this Court arrived at the conclusion, that a writ petition was not maintainable under Article 32 of the Constitution of India, to assail an order passed by this Court.

(v) Reference was also made to the recent decision rendered by this Court in Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314. In the above judgment, this Court referred to the earlier judgments rendered by this Court, and approved the issue, which is subject matter of consideration at our hands. The observations which are relevant, are being extracted hereunder:-

> "14. In Kanu Sanyal v. District Magistrate, Darjeeling and Ors., (1973) 2 SCC 674, it was laid down that the writ of habeas corpus deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty.
>
> 15. Speaking about the importance of the writ of habeas corpus, a two-Judge Bench, in Ummu Sabeena v. State of Kerala and Ors. (2011) 10 SCC 781, has observed as follows:
>
> > "15. ...the writ of habeas corpus is the oldest writ evolved by the common law of England to protect the individual liberty against its invasion in the hands of the

> executive or may be also at the instance of private persons. This principle of habeas corpus has been incorporated in our constitutional law and we are of the opinion that in a democratic republic like India where Judges function under a written Constitution and which has a chapter on fundamental rights, to protect individual liberty the Judges owe a duty to safeguard the liberty not only of the citizens but also of all persons within the territory of India. The most effective way of doing the same is by way of exercise of power by the Court by issuing a writ of habeas corpus."
>
> In the said case, a reference was made to Halsbury's Laws of England, 4th Edn. Vol. 11, para 1454 to highlight that a writ of habeas corpus is a writ of highest constitutional importance being a remedy available to the lowliest citizen against the most powerful authority.
>
> 16. Having stated about the significance of the writ of habeas corpus as a weapon for protection of individual liberty through judicial process, it is condign to refer to certain authorities to appreciate how this Court has dwelled upon and expressed its views pertaining to the legality of the order of detention, especially that ensuing from the order of the court when an accused is produced in custody before a Magistrate after arrest. It is also worthy to note that the opinion of this Court relating to the relevant stage of delineation for the purpose of adjudicating the legality of the order of detention is of immense importance for the present case.
>
> 17. In Col. Dr. B. Ramachandra Rao v. The State of Orissa, (1972) 3 SCC 256, it was opined that a writ of habeas corpus is not granted where a person is committed to jail custody by a competent court by an order which prima facie does not appear to be without jurisdiction or wholly illegal."
>
> (emphasis is ours)

Yet again, therefore, this Court affirmed the conclusion, that a writ petition cannot be filed to raise a challenge against a validly passed judicial order.

In view of the clear expression of law recorded in all the above judgments, without any divergence of view whatsoever, we have no other alternative but to conclude, that it was not open for the petitioner to file the instant writ

petition, to assail the order passed by this Court, in exercise of its jurisdiction under Articles 129 and 142 of the Constitution of India. As a matter of abundant caution, it is considered necessary to record, that even though reference was made to M.S. Ahlawat's case (supra) and Supreme Court Bar Association's case (supra), wherein this Court had entertained a challenge to earlier orders passed by it, under Article 32 of the Constitution of India, yet, the above two judgments, cannot be treated to have any bearing on the determination of the issue in hand, because in the aforesaid two cases, the maintainability of the petitions was not contested. Our instant conclusion, has also been recorded by this Court in, Rupa Ashok Hurra's case (supra), the relevant observations wherefrom, have already been extracted hereinabove.

142. Last of all, we shall endavour to deal with the submission advanced by Dr. Rajeev Dhawan, learned Senior Counsel, to the effect that the instant petition was maintainable in exercise of the jurisdiction vested in this Court, under Articles 129 and 142 of the Constitution of India. The above provisions are being extracted hereunder;-

> "129. Supreme Court to be a court of record - The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.
>
> 142. Enforcement of decrees and orders of the Supreme Court and orders as to discovery, etc. - (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe

> (2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself."

Relying on the above provisions, learned Senior Counsel asserted, that "maintainability exists, because we can all make mistakes, and the mistakes that we make, need to be corrected". The submission of the learned counsel in this behalf was, that in the above view of the matter, jurisdiction could truly be traced, to Articles 129 and 142 for correcting mistakes. It was the submission of the learned counsel, that this Court being a Court of record, had unlimited jurisdiction to correct all mistakes committed by it. Referring to Article 142 of the Constitution of India it was submitted, that it was the pious obligation of Court to do complete justice, and accordingly, whenever injustice was traceable, it was imperative for this Court to rectify the same. On the subject under reference, learned Senior Counsel relied on the decision in Rupa Ashok Hurra's case (supra) and invited our pointed attention to following observations recorded therein:-

> "23. These contentions pose the question, whether an order passed by this Court can be corrected under its inherent powers after dismissal of the review petition on the ground that it was passed either without jurisdiction or in violation of the principles of natural justice or due to unfair procedure giving scope for bias which resulted in abuse of the process of the Court or miscarriage of justice to an aggrieved person.
>
> xxx xxx xxx

> 49. The upshot of the discussion in our view is that this Court, to prevent abuse of its process and to cure a gross miscarriage of justice, may re-consider its judgments in exercise of its inherent power.
>
> 50. The next step is to specify the requirements to entertain such a curative petition under the inherent power of this Court so that floodgates are not opened for filing a second review petition as a matter of course in the guise of a curative petition under inherent power. It is common ground that except when very strong reasons exist, the Court should not entertain an application seeking reconsideration of an order of this Court which has become final on dismissal of a review petition. It is neither advisable nor possible to enumerate all the grounds on which such a petition may be entertained."
>
> (emphasis is ours)

143. It is not possible for us to accept the contention advanced at the hands of the learned Senior Counsel. By placing reliance on the decision rendered by this Court in Rupa Ashok Hurra's case (supra), learned counsel must be deemed to have impliedly conceded the issue, against himself. In Rupa Ashok Hurra's case (supra), this Court examined the remedies available to an individual. In the above judgment, this Court examined the ambit and scope of Article 137 of the Constitution of India, whereunder, a review petition could be filed for the correction of an error apparent on the face of the record. In the judgment relied upon, this Court also expressed the view, that a curative petition could be filed for corrections of such like errors, after a review petition had been dismissed. It is relevant to mention, that in furtherance of the directions issued by this Court in Rupa Ashok Hurra's case (supra), this Court has framed rules, for entertaining curative petitions. Such curative petitions, when entertained, are placed before a five-Judge Bench including the senior most three

Judges of this Court. Placing reliance on Rupa Ashok Hurra's case (supra) evidences, that the petitioner was aware of the jurisdiction of this Court under Article 137 of the Constitution of India for filing a review petition, as also, the permissibility of filing a curative petition, after the concerned party had not succeeded, in the review petition. Unfortunately, the petitioner has not chosen either of the above jurisdictions. The instant petition has been styled as a criminal writ petition. The instant petition is not maintainable as no fresh petition is shown to be maintainable, under the provisions (Articles 129 and 142 of the Constitution of India), relied upon by the learned Senior Counsel. Moreover, our deliberations on the merits of the controversy further reveals, that there is neither any jurisdictional error, nor any error in law has been shown to be made out, from the impugned order dated 4.3.2014.

144. For all the reasons recorded hereinabove we are of the view, that the instant petition is not maintainable and the same is, therefore, liable to be dismissed on the ground of maintainability.

XI. Conclusions

145. In view of our findings recorded hereinabove, our conclusions are summarized hereunder:-

I. We find no merit in the contention advanced on behalf of the petitioner, that we should recuse ourselves from the hearing of this case. Calculated psychological offensives and mind games adopted to seek recusal of Judges, need to be strongly repulsed. We deprecate such

tactics and commend a similar approach to other Courts, when they experience such behaviour. (For details, refer to paragraph nos. 1 to 14).

II. Disobedience of orders of a Court strikes at the very root of the rule of law, on which the judicial system rests. Judicial orders are bound to be obeyed at all costs. Howsoever grave the effect may be, is no answer for non-compliance of a judicial order. Judicial orders cannot be permitted to be circumvented. In exercise of contempt jurisdiction, Courts have the power to enforce compliance of judicial orders, and also, the power to punish for contempt. (For details, refer to paragraph nos. 15 to 19).

III. The facts of this case reveal, that the two companies of which the petitioner is a promoter, flouted orders passed by the SEBI (FTM), SAT, the High Court and of this Court, with impunity. Facts and information solicited were never disclosed. The position adopted by the two companies was always projected on the basis of unverifiable material. This Court recorded in its order dated 31.8.2012, that the factual assertions made on behalf of the two companies seemed to be totally unrealistic and could well be fictitious, concocted and made up, and also remarked, that the affairs of the two companies seemed to be doubtful, dubious and questionable. The above position has remained unaltered, inasmuch as, no authentic and verifiable material sought has ever been furnished by the two companies. The two companies remained adamant while frittering away repeated opportunities granted by this Court to comply with the orders dated 31.8.2012 and 5.12.2012. The companies adopted a

demeanour of defiance constituting a rebellious behaviour, not amenable to the rule of law. (For details, refer to paragraph nos. 20 to 39).

IV. Efforts made to cajole the two companies and the petitioner were always stonewalled and brushed off. All intermediary means to secure compliance of this Court's orders dated 31.8.2012 and 5.12.2012, were evaded and skirted. Even proposals to secure the payments (as against, the payment itself) to be made to the investors, in terms of this Court's orders, were systematically frustrated. Similar proposals made unilaterally by learned Senior Counsel representing the two companies and the petitioner himself, turned out to be ploys to sidetrack and derail the process of law. Such unilateral proposals, were unilaterally withdrawn. Since all the efforts to cajole the two companies and the petitioner were methodically circumvented, we started adopting sequentially harsher means to persuade compliance of this Court's orders dated 31.8.2012 and 5.12.2012, leading finally to the passing of the impugned order dated 4.3.2014. (For details, refer to paragraph nos. 40 to 55).

V. The Code of Civil Procedure, 1908, which regulates civil proceedings in India, expressly contemplates arrest and detention for the enforcement of a money decree. And the Code of Criminal Procedure, 1973, which regulates criminal proceedings in India, envisages arrest and detention as a mean for enforcing financial liability. The submission made by the learned Senior Counsel for the petitioner to the effect, that execution of a money decree or enforcement of a financial liability by way

of arrest and detention was a procedure unknown to law, is therefore, wholly misconceived. (For details, refer to paragraph nos. 56 to 61).

VI. The submission made by the learned counsel for the petitioner, that this Court was obliged to comply with the procedure contemplated under Section 51, and rules 37 and 40 of Order XXI, of the Code of Civil Procedure, 1908, before ordering the arrest and detention of the petitioner (and the other contemnors) is devoid of any merit, because Section 51 of the Code of Civil Procedure, 1908 and the other allied provisions referred to above, are not applicable to actions emanating out of the SEBI Act. So also, rule 6 of Order XIII of the Supreme Court Rules, 1966, has no applicability, with reference to the SEBI Act. Be that as it may, this Court before passing the impugned order dated 4.3.2014 had immaculately followed the procedure contemplated under the provisions of the Code of Civil Procedure, 1908, as were relied upon by the learned counsel for the petitioner, before ordering the petitioner's (and the other contemnors') arrest and detention. The submission of the learned counsel for the petitioner, so as to avoid his arrest and detention, based on the judgment rendered by this Court in Jolly George Varghese & Anr. v. Bank of Cochin, (1980) 2 SCC 360, being inapplicable to the facts and circumstances of this case, was liable to be rejected, and has accordingly been rejected. (For details, refer to paragraph nos. 62 to 77).

VII. In response to a prayer made by the SEBI (in Interlocutory Application nos. 68 and 69 of 2013 in Civil Appeal no. 9813 of 2011), *inter*

alia, seeking the arrest and detention of the petitioner (and two other contemnors, namely, Mr. Ravi Shankar Dubey and Mr. Ashok Roy Choudhary), the petitioner filed a personal reply by way of an affidavit. The petitioner in his written reply raised all possible legal and factual defences. Different orders were passed from time to time in furtherance of the prayers made in the aforementioned interlocutory applications, including the order preventing the petitioner (and the other contemnors) from leaving the country, as also, the order restraining the two companies from parting with any movable or immovable property. A number of opportunities of hearing were given to the learned counsel representing the two companies and the contemnors. Finding the attitude of the contemnors defiant and non-cooperative, their personal presence was ordered. The petitioner, who was directed to be present on 26.2.2014, did not enter personal appearance. His personal presence was enforced through non-bailable warrants on 4.3.2014. During the course of their personal presence in Court, the petitioner and the other contemnors were afforded an opportunity of oral hearing. The petitioner repeatedly addressed this Court on 4.3.2014. Only thereafter, the impugned order dated 4.3.2014 was passed. In view of the above facts it is not possible for us to accept, that the impugned order was passed without following the rules of natural justice or without affording the petitioner an opportunity of hearing. (For details, refer to paragraph nos. 78 to 96).

VIII. The law laid down by this Court in Jaswant Singh v. Virender Singh & Ors., 1995 Supp. (1) SCC 384, has been found to be fully applicable to the facts of this case, particularly the mannerism and demeanour exhibited by the petitioner and some of the learned counsel. Our recusal from the case sought on the ground of bias, has been found to be devoid of any merit. Each and every insinuation levelled by the petitioner and his learned Senior Counsel, during the course of hearing, has been considered and rejected on merits. (For details, refer to paragraph nos. 97 to 112).

IX. The defence raised by the petitioner, that the two companies had already substantially redeemed the OFCD's, has been examined under two different perspectives. Firstly, the above defence is unavailable to the two companies in law, after the same was rejected on 5.12.2012 by a three-Judge Division Bench (in Civil Appeal no. 8643 of 2012 and Writ Petition (Civil) no. 527 of 2012). Secondly, the said defence has been examined from various factual perspectives and has been found to be untenable. Sole reliance on general ledger entries without any other authentication, has been held to be insufficient proof of the refunds claimed to have been made by the two companies to the investors, specially because, such cash redemptions have not been affirmed in the certificate issued by the firm of Chartered Accountants, which had audited the accounts of the two companies. (For details, refer to paragraph nos. 113 to 122).

X. The submission advanced by Mr. Ram Jethmalani, learned Senior Counsel asserting the maintainability of the instant petition under the maxim of *ex debito justitiae*, expressly recognized by this Court in A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602, is held to be devoid of any merit, consequent upon a detailed analysis of the judgment relied upon. The contention advanced by Mr. C.A. Sundaram, learned Senior Counsel for the petitioner, projecting the maintainability of the instant petition under Article 32 read with Article 21 of the Constitution of India, has been found to be unacceptable in law on the basis of a series of judgments rendered by this Court. The submission advanced by Dr. Rajeev Dhawan, learned Senior Counsel representing the petitioner, supporting the maintainability of the instant petition by placing collective reliance on Articles 129 and 142 of the Constitution of India, has also been found to be ill-founded. (For details, refer to paragraph nos. 123 to 144).

For the reasons recorded hereinabove, we find no merit in the present petition, and the same is accordingly dismissed.

XII. Post Script

146. Even though our instant observations are being recorded as a post script, after we have concluded examining the merits of the controversy arising out of the criminal writ petition filed by the petitioner - Mr. Subrata Roy Sahara, the instant part of our judgment should be treated as a part and parcel of our decision, because it emerges out of years of our

experience with the justice delivery system, and is prompted on account of the abuse of the judicial process, exposed while dealing with some Sahara Group related cases. The seriousness of the conclusions recorded herein, we hope, shall not be overlooked merely on account of the heading given to this part.

147. The number of similar litigants, as the parties in this group of cases, is on the increase. They derive their strength from abuse of the legal process. Counsel are available, if the litigant is willing to pay their fee. Their percentage is slightly higher at the lower levels of the judicial hierarchy, and almost non-existent at the level of the Supreme Court. One wonders, what is it, that a Judge should be made of, to deal with such litigants, who have nothing to lose. What is the level of merit, grit and composure required, to stand up to the pressures of today's litigants? What is it, that is needed to bear the affront, scorn and ridicule hurled at officers presiding over Courts? Surely one would need superhumans to handle the emerging pressures on the judicial system. The resultant duress is grueling. One would hope for support for officers presiding over Courts, from the legal fraternity, as also, from the superior judiciary upto the highest level. Then and only then, will it be possible to maintain equilibrium, essential to deal with complicated disputations, which arise for determination all the time, irrespective of the level and the stature, of the Court concerned. And also, to deal with such litigants.

148. We have no doubt, that the two companies and the present petitioner before this Court – Mr. Subrata Roy Sahara, are such litigants. They never subjected themselves to the authority and jurisdiction of the SEBI. They have continued with the same mannerism at all levels, right upto this Court. They have always adopted an accusing stance, before all the adjudicatory authorities. Even against us. Exhaustive details in this behalf have been expressed by us, in the order dated 31.8.2012. The pleas raised have been found to be patently false, on the face of the record.

149. During the course of passing this judgment, we required the Registry of this Court to place before us a compilation of the orders passed on different dates of hearing, ever since the filing of the appeals, which culminated in passing of the order dated 31.8.2012. We were astounded to learn, that the controversy arising out of Civil Appeal nos. 9813 and 9833 of 2011 was listed for hearing on the following 81 dates:-

> "28.11.2011, 9.1.2012, 20.1.2012, 10.2.2012, 2.3.2012, 20.3.2012, 23.3.2012, 27.3.2012, 28.3.2012, 29.3.2012, 3.4.2012, 10.4.2012, 11.4.2012, 12.4.2012, 17.4.2012, 18.4.2012, 19.4.2012, 20.4.2012, 24.4.2012, 25.4.2012, 26.4.2012, 1.5.2012, 2.5.2012, 3.5.2012, 4.5.2012, 30.5.2012, 31.5.2012, 1.6.2012, 5.6.2012, 6.6.2012, 7.6.2012, 12.6.2012, 13.6.2012, 14.6.2012, 31.8.2012, 11.9.2012, 28.9.2012, 19.10.2012, 19.11.2012, 8.1.2013, 6.2.2013, 8.2.2013, 19.2.2013, 25.2.2013, 4.4.2013, 22.4.2013, 2.5.2013, 8.5.2013, 17.7.2013, 24.7.2013, 30.7.2013, 6.8.2013, 13.8.2013, 26.8.2013, 2.9.2013, 16.9.2013, 4.10.2013, 28.10.2013, 31.10.2013, 1.11.2013, 20.11.2013, 21.11.2013, 11.12.2013, 17.12.2013, 2.1.2014, 9.1.2014, 28.1.2014, 11.2.2014, 20.2.2014, 26.2.2014, 4.3.2014, 7.3.2014, 12.3.2014, 13.3.2014, 26.3.2014, 27.3.2014, 3.4.2014, 9.4.2014, 16.4.2014, 17.4.2014 and 21.4.2014"

A lot of these hearings consumed this Court's full working day. Hearing of the main case, consumed one full part, of the entire summer vacation (of the Supreme Court) of the year 2012. For the various orders passed by us, including the order dated 31.8.2012 (running into 269 printed pages) and the present order (running into 205 printed pages), substantial Judge hours were consumed. In this country, judicial orders are prepared, beyond Court hours, or on non-working days. It is apparent, that not a hundred, but hundreds of Judge hours, came to be spent in the instant single Sahara Group litigation, just at the hands of the Supreme Court. This abuse of the judicial process, needs to be remedied. We are, therefore of the considered view, that the legislature needs to give a thought, to a very serious malady, which has made strong inroads into the Indian judicial system.

150. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time

which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for, what he has lost, for no fault? The suggestion to the legislature is, that a litigant who has succeeded, must be compensated by the one, who has lost. The suggestion to the legislature is to formulate a mechanism, that anyone who initiates and continues a litigation senselessly, pays for the same. It is suggested that the legislature should consider the introduction of a "Code of Compulsory Costs".

151. We should not be taken to have suggested, that the cost of litigation should be enhanced. It is not our suggestion, that Court fee or other litigation related costs, should be raised. Access to justice and related costs, should be as free and as low, as possible. What is sought to be redressed is a habituation, to press illegitimate claims. This practice and pattern is so rampant, that in most cases, disputes which ought to have been settled in no time at all, before the first Court of incidence, are prolonged endlessly, for years and years, and from Court to Court, upto the highest Court.

152. This abuse of the judicial process is not limited to any particular class of litigants. The State and its agencies litigate endlessly upto the highest Court, just because of the lack of responsibility, to take decisions. So much so, that we have started to entertain the impression, that all administrative and executive decision making, are being left to Courts, just for that reason. In private litigation as well, the concerned litigant would

continue to approach the higher Court, despite the fact that he had lost in every Court hitherto before. The effort is not to discourage a litigant, in whose perception, his cause is fair and legitimate. The effort is only to introduce consequences, if the litigant's perception was incorrect, and if his cause is found to be, not fair and legitimate, he must pay for the same. In the present setting of the adjudicatory process, a litigant, no matter how irresponsible he is, suffers no consequences. Every litigant, therefore likes to take a chance, even when counsel's advice is otherwise.

153. Does the concerned litigant realize, that the litigant on the other side has had to defend himself, from Court to Court, and has had to incur expenses towards such defence? And there are some litigants who continue to pursue senseless and ill-considered claims, to somehow or the other, defeat the process of law. The present case, is a classic illustration of what we wish to express. Herein the regulating authority has had to suffer litigation from Court to Court, incurring public expense in its defence, against frivolous litigation. Every order was consistently and systematically disobeyed. Every order passed by the SEBI was assailed before the next higher authority, and then before this Court. Even though High Courts have no jurisdiction, in respect of issues regulated by the SEBI Act, some matters were taken to the High Court of Judicature at Allahabad (before its Lucknow Bench). Every such endeavour resulted in failure, and was also sometimes, accompanied with strictures. Even after the matter had concluded, after the controversy had attained finality, the judicial process is

still being abused, for close to two years. A conscious effort on the part of the legislature in this behalf, would serve several purposes. It would, besides everything else, reduce frivolous litigation. When the litigating party understands, that it would have to compensate the party which succeeds, unnecessary litigation will be substantially reduced. At the end of the day, Court time lost is a direct loss to the nation. It is about time, that the legislature should evolve ways and means to curtail this unmindful activity. We are sure, that an eventual determination, one way or the other, would be in the best interest of this country, as also, its countrymen.

…….J.
(K.S. Radhakrishnan)

…….J.
(Jagdish Singh Khehar)

New Delhi;
May 6, 2014.