

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Contempt Case (AT) No. 03 of 2019
IN
Company Appeal (AT) No. 99 of 2018

IN THE MATTER OF:

**HSBC Daisy Investments (Mauritius)
Limited & Ors. ...Appellants**

Versus

Anil Dhirubhai Ambani & Ors. ...Respondents

Present:

**For Appellant(s): Mr. Vikram Nankani, Senior Advocate with
Ms. Mukta Dutta, Mr. Ashish Prasad, Mr. Sahilesh
Poria, Mr. Sanyam Saxena and Mr. Rohan Roy,
Advocates**

**For Respondents : Mr. Salman Khursid, Senior Advocate with
Mr. Chaitanya Safaya, Ms. Shally Bhasin, Ms.
Madhavi Agrawla, Ms. Amna Darkshashan and Mr.
Prateek Gupta, Advocates**

Contempt Case (AT) No. 14 of 2018
IN
Company Appeal (AT) No. 99 of 2018

IN THE MATTER OF:

**HSBC Daisy Investments (Mauritius)
Limited & Ors. ...Appellants**

Versus

Reliance Infratel Limited & Ors. ...Respondents

Present:

For Appellant(s): Mr. Vikram Nankani, Senior Advocate with Mr. Ashish Prasad, Mr. Naresh Thacker, Mr. Sahilesh Poria, Mr. Sanyam Saxena and Mr. Rohan Roy, Advocates

For Respondents : Mr. Salman Khursid, Senior Advocate with Ms. Shally Bhasin, Mr. Chaitanya Safaya Ms. Madhavi Agrawla, Ms. Amna Darkshashan and Mr. Prateek Gupta, Advocates

J U D G M E N T**SUDHANSU JYOTI MUKHOPADHAYA, J.**

The Petitioners – ‘HSBC Daisy Investments (Mauritius) Limited & Others’ have preferred the contempt petitions under Section 425 of the Companies Act, 2013 for initiating proceedings for contempt of disobedience of this Appellate Tribunal’s order dated 29th June, 2018 passed in ‘**Company Appeal (AT) No. 99 of 2018**’ alleging wilful breach of the undertaking given by the Contemnors.

2. The brief facts of the case are as follows.

The Petitioners – ‘HSBC Daisy Investments (Mauritius) Limited & Others’ filed an application u/s 397 and 398 of the Companies Act, 1956 (now Section 241-242 of the Companies Act, 2013) in C.P. No. 07/2016 before the National Company Law Tribunal, Mumbai Bench (hereinafter referred to as the ‘**Tribunal**’). In the said case an application being M.A. No. 92/2018 was filed alleging that the Respondent Nos. 7 -10 therein had caused prejudice to the interest of the applicant, who had invested Rs.1,100/- Crores by trying to alienate the assets of the company in violation of Article 79 (affirmative right) constituted in favour of ‘HSBC Daisy Investments (Mauritius) Limited & Others’.

The Tribunal passed an order on 12th March, 2018 and stayed the resolution passed by the Board of Directors to sell the assets of the 1st Respondent (*'Reliance Infratel Ltd.'*) to *'Reliance Jio'* until further orders.

3. The aforesaid interim order dated 12th March, 2018 was challenged by *'Reliance Infratel Limited & Others'* (Contemnors herein) before this Appellate Tribunal in *'Company Appeal (AT) No. 99 of 2018'*.

4. During the pendency of the *'Company Appeal (AT) No. 99/2018'*, petition for initiation of *'Corporate Insolvency Resolution Process'* under Section 9 of the Insolvency and Bankruptcy Code, 2016, was filed against *'Reliance Infratel Limited'*; *'Reliance Communications Limited'* and *'Reliance Communications Infrastructure Limited'*. The aforesaid fact was brought to the notice of this Appellate Tribunal and in the interest of the companies, the parties reached settlement by a *'Term of Settlement'* (dated 15th June, 2018) which was noticed by this Appellate Tribunal on 29th May, 2018, when the following order was passed:

“29.05.2018 *When the matter was taken up, learned Counsel appearing on behalf Reliance Infratel Limited & Ors. produced a letter dated 29.05.2018 which reads as follows:*

“29.5.2018

To,

- 1. HSBC Daisy Investments (Mauritius) Limited*
- 2. Drawbridge Towers Limited*
- 3. Galleon Technology Offshore Limited*

4. *Galleon Special Opportunities Master Fund, SPC, Limited
Galleon Crossover Segregated Portfolio,*
5. *Galleon Special Opportunities Master Fund, SPC, Limited
Galleon Asia Crossover Segregated Portfolio,*
6. *IIC Pond View R Tower Limited,*
7. *IIC Lispenard R Tower Limited*
8. *Investment Partners B(Mauritius) Limited,*
9. *NSR PE Mauritius LLC/Revendell PE LLC, and*
10. *Quantum (M) Limited*

Re.: Company Appeal (AT) No. 99 of 2018

Reliance Infratel Ltd. & Ors.

Versus

HSBC Daisy Investments (Mauritius) Ltd. & Ors.

Dear Sir,

*The Appellants i.e., Reliance Infratel Ltd.,
Reliance Communications Infrastructure Ltd.
and Reliance Communications Ltd. in the
aforesaid Company Appeal will execute the
enclosed Consent Terms immediately after the
insolvency exit date (as referred to in the
attached consent terms).*

Sd/-

*(Punit Garg)
Director/Shareholder
Reliance Communications Ltd.”*

The proposed consent term has also been produced which reads as follows:

*“National Company Law Appellate Tribunal
New Delhi
Company Appeal (AT) No. 99 of 2018
Between
Reliance Infratel Limited & Ors.
And
HSBC Daisy Investments (Mauritius) Ltd. & Ors.*

CONSENT TERMS

These consent terms are executed by the parties set out herein below and include their successors and assigns:

1. *Reliance Infratel Limited,*
2. *Reliance Communications Infrastructure Limited,*
and
3. *Reliance Communications Limited*

*.... Hereinafter collectively referred to as **Appellants**”*

1. *HSBC Daisy Investments (Mauritius) Limited*
2. *Drawbridge Towers Limited*
3. *Galleon Technology Offshore Limited*
4. *Galleon Special Opportunities Master Fund, SPC, Limited*
Galleon Crossover Segregated Portfolio,
5. *Galleon Special Opportunities Master Fund, SPC, Limited*
Galleon Asia Crossover Segregated Portfolio,
6. *IIC Pond View R Tower Limited,*
7. *IIC Lispenard R Tower Limited*
8. *Investment Partners B(Mauritius) Limited,*
9. *NSR PE Mauritius LLC/Revendell PE LLC, and*
10. *Quantum (M) Limited*

..... hereinafter collectively referred to as “**Respondents**”

*Appellants and Respondents are hereinafter collectively referred to as “**Parties**” and individually as “**Party**”.*

1. *The Respondents are minority shareholders (holding 4.26% shares) in Appellant No. 1 Company. Being aggrieved by various acts of the majority shareholders (Appellant Nos. 2 and 3), the Respondents had filed a Company Petition No. 7 of 2016 against inter alia the Appellants alleging oppression and mis management, which is pending before the NCLT, Mumbai Bench.*
2. *The parties have now agreed to put an end to the ongoing disputes and in view thereof have entered into the present Consent Terms to be effective upon the Appellants exiting the Insolvency Resolution process initiated pursuant to order dated 15 May 2018 passed by the Mumbai Bench of NCLT in petition nos. CP(IB)1385(MB)/2017, CP(IB) 1386(MB)/2017 and CP(IB) 1387(MB)/2017 filed by Ericsson inter alia against Appellant Nos. 1 and 3 under the Insolvency and Bankruptcy Code, 2016 (“Insolvency exit date”).*
3. *It is agreed, declared and ordered:*
 - a. *The Appellants agree and undertake that they shall jointly and/or severally pay a sum of INR 230 Crore to the Respondents in the proportion as set out in Annexure A hereto within a period of 180 days from the Insolvency exit date.*

- b. *In order to secure the payment of INR 230 crore, Reliance Communications Limited agrees and undertakes to provide an unconditional and irrevocable Bank Guarantee in favor of the Respondents issued by a scheduled commercial bank with an 'AAA' rating issued by CRISIL or ICRA. The Bank Guarantee shall be issued and handed over to the Respondents within 15 banking days from the date of the Insolvency exit date.*
4. *In view of the present Consent Terms, and in consideration of the Appellants undertaking to pay the amounts as agreed hereunder, the Petition No. 7 of 2016 pending before the NCLT, Mumbai Bench shall be disposed of as withdrawn upon the Insolvency exit date. All orders including the Order dated 12 March 2018 passed by the NCLT, Mumbai Bench shall stand vacated upon the Insolvency exit date.*
5. *Contempt Application No. 148 of 2018 in Company Petition No. 7 of 2016 shall also stand disposed of upon the Insolvency exit date. The Respondents agree and undertake to withdraw the Special Leave Petition (Civil) No. 9462 of 2018 pending before the Hon'ble Supreme Court of India within 15 days of the Insolvency exit date.*
6. *All parties withdraw all allegations against each other.*
7. *No order as to costs.*

Dated this _____ day of May 2018

*For Reliance Infratel Limited
(Appellant No. 1)*

*For Reliance Communications
Infrastructure Limited (Appellant No. 2)*

*For Reliance Communications Limited
(Appellant No. 3)*

*For Agarwal law Associates
(Advocate for the Appellants)*

For (1) HSBC Daisy Investments (Mauritius) Limited

(2) Drawbridge Towers Limited

(3) Galleon Technology Offshore Limited

*(4) Galleon Special Opportunities Master Fund, SPC,
Limited
Galleon Crossover Segregated Portfolio*

*(5) Galleon Special Opportunities Master Fund, SPC,
Limited
Galleon Asia Crossover*

(6) IIC Pond View R Tower Limited

(7) IIC Lispenard R Tower Limited

(8) Investment Partners B(Mauritius) Limited

(9) Revendell PE LLC

(10) Quantum (M) Limited

(Respondent Nos. 1 to 10)

*Mr. Robert Pavrey
(Authorised Representative)*

Advocates for Respondent Nos. 1 to 10

ANNEXURE A

Proportion of each Respondent

<i>Respondent No.</i>	<i>Name</i>	<i>Percentage</i>
1.	<i>HSBC Daisy Investments (Mauritius) Limited</i>	<i>27.826</i>
2.	<i>Drawbridge Towers Limited</i>	<i>17.391</i>
3.	<i>Galleon Technology Offshore Limited</i>	<i>8.696</i>
4.	<i>Galleon Special Opportunities Master Fund, SPC, Ltd Galleon Crossover Segregated Portfolio</i>	<i>7.609</i>
5.	<i>Galleon Special Opportunities Master Fund, SPC, Limited Galleon Asia Crossover segregated portfolio</i>	<i>5.217</i>
6.	<i>IIC Pond View R Tower Limited</i>	<i>4.348</i>
7.	<i>IIC Lispenard R Tower Limited,</i>	<i>4.348</i>
8.	<i>Investment Partners (B) Mauritius Limited</i>	<i>8.696</i>
9.	<i>Revendell PE LLC/NSR Mauritius PE LLC</i>	<i>7.174</i>
10.	<i>Quantum (M) Limited</i>	<i>8.696</i>
11.	<i>Total</i>	<i>100</i>

Learned Counsel for the Appellants submits that the ‘consent terms’ would be signed by the parties immediately after the ‘Insolvency exit date’, as referred to in the ‘consent terms’.

*Learned Senior Counsel appearing on behalf of
HSBC Daisy Investments (Mauritius) Limited & Ors.*

submits that they agree with the 'consent terms' which will be signed.

Mr. Tushar Mehta, learned Senor Counsel appearing on behalf of State Bank of India (Appellant in analogous matters) submits that in view of 'consent terms' between the Appellants and Respondents of the Company appeal (AT) No. 99 of 2018, the State Bank of India and 'Joint Lender Forum' will await the outcome of Insolvency and proposed 'consent terms'.

In view of the aforesaid developments, learned Counsels of the parties sought for and allowed to withdraw the Appeal, without going into the merit, with liberty to proceed in terms with the 'consent terms' after 'Insolvency exit date' if permissible.

Both the appeals stand disposed of with the aforesaid observations.”

5. From the order dated 29th May, 2018, it is clear that the appeal was allowed to be withdrawn by this Appellate Tribunal with clear understanding that this Appellate Tribunal has not gone into the merit of the case and given liberty to the parties to proceed with the 'consent terms' **“after Insolvency exit date’, if permissible”**.

6. Subsequently, in a proceeding for initiation of 'Corporate Insolvency Resolution Process' initiated against 'Reliance Infratel Ltd'; 'Reliance Telecome Ltd.' and 'Reliance Communications Ltd.' an interim order was passed by this Appellate Tribunal on 30th May, 2018 in '**Company Appeal (AT) (Insolvency) Nos. 255-256 of 2018 etc.**', which reads as follows:

"30.05.2018- *These appeals have been preferred by the Appellants-Directors and Shareholders of 'Reliance Infratel Ltd.'; 'Reliance Telecom Ltd.' and 'Reliance Communications Ltd.' against the common orders dated 15th May, 2018 and 18th May, 2018, passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, whereby and whereunder, the application(s) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") preferred by the Respondent- 'Ericsson India Pvt. Ltd.'- ('Operational Creditor') have been admitted, order of 'Moratorium' has been passed and 'Insolvency Resolution Professional' has been appointed.*

Apart from the ground that an arbitration proceeding is pending and the Hon'ble Supreme Court has passed an order, some other grounds have also been taken to assail the impugned orders.

2. The 'Financial Creditors'- 'Joint Lenders Forum', some other Banks and 'Ericsson India Pvt. Ltd.'- ('Operational Creditor') have appeared. It is informed that interests of a number of Banks are involved who are awaiting the decision of this Appellate Tribunal as they intend to recover the amount.

3. Mr. Tushar Mehta, learned Senior Counsel for the 'Joint Lenders Forum'- ('Financial Creditors') submitted that they have reached an agreement with the 'Corporate Debtors' for sale of assets of the 'Corporate Debtors', pursuant to which, the 'Financial Creditors' can recover a sum of Rs. 18,100 crores approximately. He further submits that on restructuring and sell of assets, the 'Financial Creditors' can recover Rs. 37,000 Crores approximately.

4. According to them, in view of the impugned order, the Bank is not in a position to recover the amount and there is recurring loss of more than crores per day.

5. Mr. Rajeev Mehra, learned Senior Counsel appearing on behalf of the 'Standard Chartered Bank' has also taken similar plea and supported the stand taken by the learned Senior Counsel for the 'Joint Lenders Forum'.

6. Mr. Kapil Sibal, learned Senior Counsel appearing on behalf of the Appellants submitted that if the impugned order is stayed and/or set aside, the parties may settle the matter.

7. The case was taken up yesterday (29th May, 2018) and on the request of the parties, the case was adjourned to find out whether the Appellants and the 'Operational Creditors' can settle the matter.

8. Mr. Salman Khursid, Mr. Arun Kathpalia and Mr. Anil Kher, learned Senior Counsel appear on behalf of the 'Operational Creditors' in the respective cases. They submitted that the Respondent- 'Ericsson India Pvt. Ltd.'- ('Operational Creditor') has agreed to settle the matter if upfront payment of Rs. 600 Crores (Rupees Six hundred Crores Only) is made by the Appellants/'Corporate Debtors'.

9. Mr. Kapil Sibal, learned Senior Counsel for the Appellants informed that the Appellants have agreed to pay a sum of Rs. 550 Crores (Rupees five hundred fifty Crores only) (jointly) in favor of 'Ericsson India Pvt. Ltd.'- ('Operational Creditor') and sought for 120 days' time to pay the total amount.

10. *Learned Senior Counsel appearing on behalf of 'Ericsson India Private Limited'- ('Operational Creditor'), on instructions from the Respondent, informed that the 1st Respondent has agreed to receive a sum of Rs. 550 Crores (Rupees Five hundred fifty Crores only), if the total amount is paid within 120 days as proposed by the learned Senior Counsel for the Appellants.*

11. *Taking into consideration the stand taken by the parties and the fact that if the 'Corporate Insolvency Resolution Process' is allowed to continue, all the 'Financial Creditors' as also the 'Operational Creditors' may suffer more loss and the Appellants have made out a prima facie case, as agreed and suggested by learned Senior Counsel for the Appellants and learned Senior Counsel for the 'Joint Lenders Forum' and the learned Senior Counsel for the 'Operational Creditor'- 'Ericsson India Pvt. Ltd.', we pass the following orders:*

- i. Until further orders, the impugned orders dated 15th May, 2018 and 18th May, 2018, passed by the Adjudicating Authority, Mumbai Bench in C.P. (IB) 1385, 1386 & 1387 (MB)/2017, shall remain stayed. The 'Resolution Professional' will allow the managements of the 'Corporate Debtors' to*

function. He may attend the office of the ‘Corporate Debtors’ till further order is passed by this Appellate Tribunal. Thereby, the ‘Corporate Insolvency Resolution Process’ initiated against the ‘Corporate Debtors’ namely— ‘Reliance Infratel Ltd.’; ‘Reliance Telecom Ltd.’ and ‘Reliance Communications Ltd.’ shall remain stayed, until further orders.

- ii. *The ‘Financial Creditors’/’Joint Lenders Forum’ with whom the assets of the ‘Corporate Debtors’ have been mortgaged as also the ‘Corporate Debtors’ are given liberty to sell the assets of the ‘Corporate Debtors’ and to deposit the total amount in the account of the lead Bank of Joint Lenders Forum which shall be subject to the decision of these appeals. If the appeals are rejected, in such case, the ‘Financial Creditors’/’Joint Lenders Forum’ and other Banks with whom the amount is deposited, will have to return the total amount in the respective accounts of the ‘Corporate Debtors’.*
- iii. *The Chairman, Managing Directors, Directors and other members of the ‘Corporate Debtors’ namely— ‘Reliance Infratel Ltd.’; ‘Reliance Telecom Ltd.’ and ‘Reliance Communications Ltd.’*

are directed to pay a sum of Rs. 550 Crores (Rupees Five Hundred Fifty Crores Only) (jointly) in favour of 'Ericsson India Pvt. Ltd.' within 120 days i.e. by 30th September, 2018. In case of non-payment of the amount and part of the same, the concerned appeal(s) may be dismissed and this Appellate Tribunal may direct to complete the 'Corporate Insolvency Resolution Process' and may pass appropriate order. The payment of Rs. 550 Crores (Rupees Five Hundred Fifty Crores Only) in favour of the 'Operational Creditor' shall be subject to the decision of these appeals. If the appeals are dismissed, the 'Operational Creditor' will pay back the amount to the 'Corporate Debtors'.

12. *The Appellants and the 'Operational Creditors' are directed to file their respective affidavits of undertaking in terms of their statement as made and recorded above within 10 days.*

Let the appeals be listed 'for admission' on 3rd October, 2018.

13. *In the meantime, it will be open to the parties to file Interlocutory Application if orders and directions given*

above are not complied. Interlocutory Application Nos. 701-702, 709-710 and 712-713 of 2018 stand disposed of with aforesaid observations and directions.”

7. Immediately, in the disposed off appeal ‘**Company Appeal (AT) No. 99 of 2018**’ an ‘**Interlocutory Application No. 865 of 2018**’ was filed by the parties wherein this Appellate Tribunal noticed the plea taken by the parties and recorded the following order on 29th June, 2018 :

“29th June, 2018 : Pursuant to an interim order, passed by the National Company Law Tribunal (hereinafter referred to as “Tribunal”), Mumbai Bench, Mumbai, in a petition under Sections 241 and 242 of the Companies Act, 2013, an appeal was preferred by ‘Reliance Infratel Limited & Ors.’ and another appeal preferred by the ‘State Bank of India’, both impleading ‘HSBC Daisy Investments (Mauritius) Ltd. & Ors.’ as party Respondents. Both the appeals were heard on merit and subsequently parties reached a ‘provisional agreement’, which was taken note on 29th May, 2018 and on the request of the parties, the appeals were disposed of in terms of the ‘provisional agreement’. However, it was pleaded that the ‘consent terms’ between the Appellants and the Respondents will await the outcome of the insolvency and proposed

'consent terms' and thereafter, they will reach the final agreement.

2. *An Interlocutory Application No. 865 of 2018 has been filed by the Appellants- 'Reliance Infratel Limited & Ors.' enclosing the final 'consent terms' dated 15th June, 2018 with prayer to take the same on record and pass decree accordingly.*

3. *The final 'consent terms' of decree dated 15th June, 2018 is stated to be similar to the provisional one, except certain changes in language and the specific date given therein, which reads as follows:*

***"National Company Law Appellate Tribunal
New Delhi***

***Company Appeal (AT) No. 99 of 2018
between***

Reliance Infratel Limited & Ors.

and

HSBC Daisy Investments (Mauritius) Ltd. & Ors.

CONSENT TERMS

These consent terms are executed by the parties set out herein below and include their successors and assigns:

- 1. Reliance Infratel Limited,*
- 2. Reliance Communications Infrastructure Limited, and*
- 3. Reliance Communications Limited.*

*...hereinafter collectively referred to as **"Appellants"***

- 1. HSBC Daisy Investments (Mauritius) Limited,*

2. Drawbridge Towers Limited
3. Galleon Technology Offshore Limited.
4. Galleon Special Opportunities Master Fund, SPC, Limited Galleon Crossover Segregated Portfolio,
5. Galleon Special Opportunities, Master Fund, SPC, Limited Galleon Asia Crossover, Segregated Portfolio,
6. IIC Pond View R Tower Limited,
7. IIC Lispenard R Tower Limited,
8. Investment Partners B (Mauritius) Limited,
9. NSR PE Mauritius LLC/Rivendell PE LLC, and
10. Quantum (M) Limited.

...hereinafter collectively referred to as
“Respondents”

*Appellants and Respondents are hereinafter collectively referred to as **“Parties”** and individually as **“Party”**.*

1. *The Respondents are minority shareholders (holding 4.26% shares) in Appellant No. 1 Company. Being aggrieved by various acts of the majority shareholders (Appellant Nos. 2 and 3), the Respondents had filed a Company Petition No. 7 of 2016 against inter alia the Appellants alleging oppression and mis management, which is pending before the NCLT, Mumbai Bench.*
2. *The parties have now agreed to put an end to the ongoing disputes and in view thereof have entered into the present Consent Terms to be effective upon the order dated 15 May 2018 passed by the Mumbai Bench of NCLT in petition nos. CP(IB) 1385(MB)/2017, CP(IB) 1386(MB)/2017 and*

*CP(IB) 1387(MB)/2017 filed by Ericsson inter alia against Appellant Nos. 1 and 3 under the Insolvency and Bankruptcy Code, 2016 being stayed or set aside which has occurred on 30 May 2018 (“**Insolvency exit date**”).*

3. It is agreed, declared and ordered:

a. The Appellants agree and undertake that they shall jointly and/or severally pay a sum of INR 230 crore to the Respondents in the proportion as set out in Annexure A hereto within a period of 180 days from the Insolvency exit date.

b. *In order to secure the payment of INR 230 crore, Reliance Communications Limited agrees and undertakes to provide an unconditional and irrevocable Bank Guarantee in favour of the Respondents issued by a scheduled commercial bank with an ‘AAA’ rating issued by CRISIL or ICRA. The Bank Guarantee shall be issued and handed over to the Respondents within 15 banking days from the date of signing of the present Consent Terms.*

4. In view of the present Consent Terms, and in consideration of the Appellants undertaking to pay the amounts as agreed hereunder, the Petition No. 7 of 2016 pending before the NCLT, Mumbai Bench

shall be disposed of as withdrawn upon the Insolvency exit date. All orders including the Order dated 12 March 2018 passed by the NCLT, Mumbai Bench shall stand vacated upon the Insolvency exit date.

5. *Contempt Application No. 148 of 2018 in Company Petition No. 7 of 2016 shall also stand disposed of upon the Insolvency exit date. The Respondents agree and undertake to withdraw the SpecialLeave Petition (Civil) No. 9462 of 2018 pending before the Hon'ble Supreme Court of India within 15 days of signing of the present Consent Terms.*
6. *All parties withdraw all allegations against each other.*
7. *No order as to costs.*

*Dated this ____ day of June 2018.
For Reliance Infratel Limited
(Appellant No. 1)*

*For Reliance Communications
Infrastructure Limited (Appellant No. 2)*

*For Reliance Communications Limited
(Appellant No. 3)*

*For Agarwal Law Associates
(Advocate for the Appellants)*

- For (1) HSBC Daisy Investments (Mauritius) Limited
 (2) Drawbridge Towers Limited
 (3) Galleon Technology Offshore, Ltd.
 (4) Galleon Special Opportunities Master Fund SPC Ltd.
 Galleon Crossover Segregated Portfolio,
 (5) Galleon Special Opportunities, Master Fund SPC Ltd. Galleon
 Asia Crossover,
 (6) IIC Pond View R Tower Limited
 (7) IIC Lispenard R Tower Limited
 (8) Investment Partners B (Mauritius) Limited
 (9) Rivendell PE LLC
 (10) Quantum (M) Limited

(Respondent Nos. 1 to 10)
 Mr. Robert Pavrey
 (Authorised Representative)

Advocates for Respondent Nos. 1 to 10

Annexure A
 Proportion of each Respondent

Respondent No.	Name	Percentage
1.	HSBC Daisy Investment (Mauritius) Ltd.	27.826
2.	Drawbridge Towers Ltd.	17.391
3.	Galleon Technology Offshore Ltd.	8.696
4.	Galleon Special Opportunities Master Fund, SPC Ltd. Galleon Crossover Segregated Portfolio	7.609
5.	Galleon Special Opportunities Master Fund, SPC Ltd. Galleon Asia Crossover Segregated	5.217

6.	<i>IIC Pond View R Tower Ltd.</i>	4.348
7.	<i>IIC Lispenard R Tower Ltd.</i>	4.348
8.	<i>Investment Partners (B) Mauritius Limited</i>	8.696
9.	<i>Rivendell PE LLC/ NSR Mauritius PE LLC</i>	7.174
10.	<i>Quantum (M) Ltd.</i>	8.696
	TOTAL	100

4. *Learned counsel appearing on behalf of the Respondents- HSBC Daisy Investments (Mauritius) Ltd. & Ors.’ accepts that the final consent terms and conditions have been reached between the parties and also made similar prayer.*

5. *In the facts and circumstances, while we take into record the final consent terms is dated 15th June, 2018 and treat the same as final, though the specific date of decree of final agreement has not been shown above but on the basis of affidavit, we treat it as an agreement reached between the parties on 15th June, 2018.*

6. *I.A. No. 865 of 2018 filed in Company Appeal (AT) No. 99 of 2018 stands disposed of.”*

8. The Appellant alleged the disobedience of the aforesaid order dated 29th June, 2018 recorded by this Appellate Tribunal in I.A. No. 865/2018 passed in a Company Appeal which was allowed to be withdrawn.

9. Learned counsel appearing on behalf of the Petitioners submitted that the 'Contemnors' – 'Respondents' deliberately flouted the undertaking given before this Tribunal on 29th May, 2018, which amounts to violation of the order passed by this Appellate Tribunal. It was submitted that in compliance of the 'consent terms', the Petitioners withdrew all the proceedings which was filed against the 'Majority Group' and were pending before the NCLT and the Hon'ble Supreme Court. Later on, during discussions with the representatives of the 'Reliance Group' and 'Contemnor No. 26', the Petitioners were informed that Contemnor No. 26 was working with the Banks and will furnish a Bank Guarantee as per this Appellate Tribunal's order. Petitioners were further informed that since the sale of the assets was in progress, the amount would be paid earlier than the scheduled i.e. between 10-12 September, 2018. It is alleged that in spite of such undertaking no amount has been paid, nor Bank Guarantee has been provided for defaults of order of this Appellate Tribunal dated 29th June, 2018.

10. Learned counsel appearing on behalf of the Petitioners relied upon the decision of the Bombay High Court in "**Bajaranglal Gangadhar Khemka & Ors. v. Kapurchand Ltd.**" – "ILR 1951 Bom 125". In the said case, the defendants had given undertaking pursuant to which consent decree was passed. The court held that undertaking given in a consent decree and breach of such undertaking amounts to contempt of court.

11. Learned counsel for the Appellant also relied on the decision of the Hon'ble Supreme Court in "**Bank of Baroda vs. Sadruddin Hasan Daya & Ors.**" –

(2004) 1 SCC 360” wherein the Hon’ble Supreme Court observed that breach of undertaking given in the consent decree is civil contempt.

In the said case, the Contempt Petition was filed, *inter alia*, on the ground that the suit instituted by ‘Oman International Bank, SAOD’ – (Respondents), without disclosing the consent decree dated 28th July, 1999 passed by the Hon’ble Supreme Court, entered into a settlement whereby a consent decree was passed by the Bombay High Court on 5th October, 1999 and thereby they violated the undertaking given in clause 7 of the consent decree. Hon’ble Supreme Court taking into consideration the ‘consent terms’ accepted by the respondents before the Hon’ble Supreme Court on the basis of which the decree was passed on 28th July, 1999 held that the consent decree was violated. In the said case, the Hon’ble Supreme Court noticed the decision of the Bombay High Court in **“Bajaranglal Gangadhar Khemka v. Kapurchand Ltd.”** - ‘AIR 1950 Bom 336’ wherein the Hon’ble Bombay High Court held that there was no reason why even in a consent decree a party may not give an undertaking to the Court. Although the Court may be bound to record a compromise, still when the Court passes a decree, it puts its imprimatur upon those terms and makes the terms a rule of the Court; and it would be open to the Court; before it did so, to accept an undertaking given by a party to the court.

12. On the other hand, according to the learned counsel appearing on behalf of the alleged Contemnors ‘Respondents’ on 29th June, 2018 this Appellate Tribunal merely took on record the ‘Consent Terms’, which were recorded between the parties and no direction was passed by this Appellate Tribunal in terms of said consent recorded. It was submitted that undertaking was given to this Appellate Tribunal, as apparent from order dated 29th June, 2018 wherein

at paragraph 5 it is recorded that *“while we take into record the final consent terms dated 15th June, 2018 and treat the same as final, though the specific date of decree of final agreement has not been shown above but on the basis of affidavit, we treat it as an agreement reached between the parties.”*

13. From the record, we find that ‘Company Appeal (AT) No. 99 of 2018’ was not decided by this Appellate Tribunal on merit and was allowed to be withdrawn on 29th May, 2018 as the parties reached the ‘Terms of Settlement’. Subsequently on 29th June, 2019, though Interlocutory Application was not filed for any decision, the appeal having withdrawn, it was taken on record and the ‘Consent Terms’, which parties treated as final decree and in absence of any date shown therein, this Appellate Tribunal merely stated that **“we treat it as an agreement reached between the parties on 15th June, 2018.”**

14. From bare perusal of the orders passed on 29th May, 2018 and 29th June, 2018, it is clear that no undertaking was given by any of the parties before this Appellate Tribunal. In fact the appeal was allowed to be withdrawn in view of the ‘Consent Terms’ reached between the parties.

15. Similar issue fell for consideration before the Hon’ble Supreme Court in **‘Babu Ram Gupta vs. Sudhir Bhasin and another’** – *“(1980) 3 SCC 47”*, wherein the Hon’ble Supreme Court observed that in absence of a written undertaking given by the contemnor to the court or incorporation of the same by the court in its order, mere non-compliance of a consent order or compromise decree, would not amount to civil contempt. The Hon’ble Supreme Court while laying down the test in order to determination whether contempt of court has been committed or not, observed and held :

“10. *These are the tests laid down by this Court in order to determine whether a contempt of court has been committed in the case of violation of a prohibitive order. In the instant case, however, as indicated above, there is no application nor any affidavit nor any written undertaking given by the appellant that he would cooperate with the receiver or that he would hand over possession of the Cinema to the receiver. Apart from this, even the consent order does not incorporate expressly or clearly that any such undertaking had been given either by the appellant or by his lawyer before the Court that he would hand over possession of the property to the receiver. In the absence of any express undertaking given by the appellant or any undertaking incorporated in the order impugned, it will be difficult to hold that the appellant wilfully disobeyed or committed breach of such an undertaking. What the High Court appears to have done is that it took the consent order passed which was agreed to by the parties and by which a receiver was appointed, to include an undertaking given by the contemner to carry out the directions contained in the order. With due respects, we are*

unable to agree with this view taken by the High Court. A few examples would show how unsustainable in law the view taken by the High Court is. Take the instance of a suit where the defendant agrees that a decree for Rs 10,000 may be passed against him and the court accordingly passes the decree. The defendant does not pay the decree. Can it be said in these circumstances that merely because the defendant has failed to pay the decretal amount he is guilty of contempt of court? The answer must necessarily be in the negative. Take another instance where a compromise is arrived at between the parties and a particular property having been allotted to A, he has to be put in possession thereof by B. B does not give possession of this property to A. Can it be said that because the compromise decree has not been implemented by B, he commits the offence of contempt of court? Here also the answer must be in the negative and the remedy of B would be not to pray for drawing up proceedings for contempt of court against B but to approach the executing court for directing a warrant of delivery of possession under the provisions of the Code of Civil Procedure. Indeed, if we were to hold that non-compliance of

a compromise decree or consent order amounts to contempt of court, the provisions of the Code of Civil Procedure relating to execution of decrees may not be resorted to at all. In fact, the reason why a breach of clear undertaking given to the court amounts to contempt of court is that the contemner by making a false representation to the court obtains a benefit for himself and if he fails to honour the undertaking, he plays a serious fraud on the court itself and thereby obstructs the course of justice and brings into disrepute the judicial institution. The same cannot, however, be said of a consent order or a compromise decree where the fraud, if any, is practised by the person concerned not on the court but on one of the parties. Thus, the offence committed by the person concerned is qua the party not qua the court, and, therefore, the very foundation for proceeding for contempt of court is completely absent in such cases. In these circumstances, we are satisfied that unless there is an express undertaking given in writing before the Court by the contemner or incorporated by the court in its order, there can be no question of wilful disobedience of such an undertaking. In the instant case, we have already

held that there is neither any written undertaking filed by the appellant nor was any such undertaking impliedly or expressly incorporated in the order impugned. Thus there being no undertaking at all the question of breach of such undertaking does not arise.

16. From the aforesaid finding of the Hon'ble Supreme Court, we find that the consent terms agreed upon by the parties if not carried upon, can be a ground for execution of a compromise decree or the 'Consent Terms' but it cannot be a ground for initiation of a contempt proceeding.

17. We have noticed that this Appellate Tribunal had not gone in to merit and allowed the appeal to be withdrawn on 29th May, 2018 in view of the 'consent terms' reached between the parties. In the disposed of appeal, Interlocutory Application was filed to show that the parties have reached the final consent terms, but there was no undertaking given by any party before this Appellate Tribunal nor any direction was issued.

18. On bare perusal of pleadings made in the present petitions, we find that Petitioners filed the Contempt Petitions for execution of their 'consent terms', which will be apparent from the fact that companies namely 'Reliance Communications Infrastructure Limited'; 'Reliance Infratel Limited' and Reliance Communications Limited, have also been impleaded as contemnors, though it is not maintainable against the companies.

19. We find that no case is made out for initiation of contempt proceedings against any of the alleged 'Contemnors' – 'Respondents'. Both the applications

being Contempt Case (AT) No. 3 of 2019 and in Contempt Case (AT) No. 14 of 2018 are accordingly dismissed.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

New Delhi

23rd July, 2019

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