

# SUPREME COURT OF INDIA

Ashish Seth

Vs.

Sumit Mittal

WP(Crl.)No.5/2015

(Ashok Bhushan and M.R.Shah,JJ.,)

24.04.2020

## JUDGMENT

**M.R.Shah,J.,**

1. All these Contempt Petitions being Contempt Petition(C) No. 34/2016, Contempt Petition (C) No. 257/2016 and Contempt Petition (C) No. 889/2017 are preferred by the respective applicants who as such were parties to Writ Petition (Criminal) No. 5 of 2015 and also parties to the Memorandum of Settlement dated 4.5.2015 which ultimately was made a part of the order passed by this Court dated 5.5.2015 disposing of Writ Petition (Criminal) No. 5/2015 and Writ Petition (Criminal) No.11/2015, to initiate the contempt proceedings against concerned respective respondents for non-compliance of the order passed by this Court in the aforesaid writ petition.

2. The facts leading to the present contempt petitions in nutshell are as under: That one Triveni Ferrous Infrastructure Private Limited (hereinafter referred to as 'TFIPL') was a joint venture company constituted of two groups - one being the Seth Group [consisting of Mr. Surrender Seth, Mr. Ashish Seth, M/s Ferrous Forging Ltd., M/s Ferrous Alloys Forging Pvt. Ltd. (FAFPL), M/s Ferrous Township Pvt. Ltd. (FTPL) and M/s Ferrous Infrastructure Pvt. Ltd. (FIPL)] and the second being the Mittal Group [consisting of Mr. Sumit Mittal and Mr. Madhur Mittal].

2.1 That TIFPL acquired some land at Sector 70 and some 48.05 acres of land at Sector 89, Faridabad. The said TIFPL also availed licences Nos. 34, 35 and 36 from competent authorities in the year 2007 in respect of the land bearing Sector 89 with an intent to develop the said Sector 89 land. Subsequently both the parties being Seth Group and Mittal Group agreed that the development in the said land be divided and carried out separately and thereupon the development rights in Sector 89 land, parcel of 48.03 acres of land belonging to TIFPL, was sold in the following manner:

TFIPL 48.03 acres
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TIDCO (in liquidation) 14.80 acres (Mittal Group)	ORS Limited 5.5 acres (third party)	FIPL 14.80 acres (Seth Group) Ferrous City Project	Heritage 2.8 acres (third party)	Pal Infrastructure 10.48 acres (third party)
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2.2 That certain disputes arose between both the groups in respect of the payment of liabilities out of TFIPL which gave rise to various litigations including Writ Petition (Criminal) No. 5/2015 and Writ Petition (Criminal) No. 11/2015. The disputes were referred to mediation. A Memorandum of Settlement dated 4.5.2015 (hereinafter referred to as 'MOS') was executed between the Seth Group, Mittal Group and TFIPL. The said MOS was produced before this Court in Writ Petition (Criminal) No.5/2015 and this Court disposed of the aforesaid writ petition in terms of the MOS. Under the MOS and the order passed by this Court in the aforesaid writ petition which was disposed of in terms of MOS dated 4.5.2015 reciprocal obligations were to be fulfilled by both the Seth Group and the Mittal Group. The obligations of the Seth Group were as mentioned in paragraph 1 to 4 of the Contempt Petition No. 34/2016 and the obligations of the Mittal Group and TFIPL were as per Clauses 5.1 to 5.9 of the contempt petition. Broadly speaking the obligations of the Seth Group and the obligations of the Mittal Group under the MOS and the order passed by this Court were as under:

**OBLIGATIONS OF THE SETH GROUP**

Sr. No.	Particulars	Amount in Rs. (Crores)	MoS Clause No.
1.	Payment to TFIPL/Mittal group towards settlement of disputes	10 (court deposit)  28.50 (by four cheques)  <b>38.50</b>	1.1    1.1.2
2.	License Renewal fee to DGTCP on behalf of TFIPL/Mittal group	1.47	1.3
3.	Bank Guarantee to secure EDC	6.65	1.2.1
4.	Bank Guarantee to secure IDW performance	3.55	1.4
5.	One time consultancy charges	0.25	19

	for renewal of license		
6.	Transfer 50% shareholding of Seth group in TFIPL at a price of Rs.50,000/-	50.00	1.5
7.	Total Financial commitment under the MOS and complied by the Seth Group	100.42	
8.	<p>Payment of DTCP on behalf of TFIPL towards EDC liability of Rs.59.05 Cr of TFIPL.</p> <p>Seth Group has and is and shall always be willing to fulfill their obligations in terms of the MoS subject to the Mittal Group fulfilling its obligations.</p>	<p>25.27</p> <p>On deferred payment basis</p>	1.2

### **OBLIGATIONS OF MITTAL GROUP**

SR. NO.	PARTICULARS	MOS CLAUSE NO.
1.	Board Resolution to be issued by TFIPL authorizing Seth Group to avail the benefits under EDC relief policy of 12.04.2012 or any other future EDC relief policy announced by the DTCP	1.2.1 Board Resolution
2.	General Power of Attorney to be issued by TFIPL in favour of FIPL (Seth Group) by 20.05.2015 i.e. within 15 days of execution of MoS to enable application for Occupancy Certificate and Completion.	53 (GPA Annexure 13)
3.	<p>Bifurcation of license- TFIPL is the license holder in respect of 48.03 acres Sector 89 Land and has sold development rights of 14.8 acres to Seth Group –</p> <p>Application was to be made within 30 days for renewal for bifurcation/recording of beneficial interest. Mittal Group/TFIPL along</p>	8

	with the Seth Group was to submit the same latest by 30.10.2015  Seth Group has already applied in terms of the renewal letter dated 01.10.2015 on 30.10.2015 and have already made the payment towards administrative charges to the DGTCP.	
4.	Renew the license till 2017 and as per undertaking on 26.10.2015 to renew till 2018.	Clause 17 and Court order dated 26.10.2015

2.3 It is the case on behalf of the Seth Group - the petitioner in Contempt Petition (Civil) No. 34/2016 that the Seth Group has duly complied with/fulfilled its obligations under the said MOS and the order passed by this Court, however, the Mittal Group has failed to comply with the same. It is the case on behalf of the Seth Group that non-compliance of the MOS by the Mittal Group has been wilful and intentional. It is the case on behalf of the Seth Group that the Mittal Group has failed to comply with/fulfill the following obligations which they were required to be complied with/fulfilled as per MOS dated 4.5.2015:

SR. NO.	PARTICULARS
1.	Board Resolution to be issued by TFIPL authorizing Seth Group to avail the benefits under EDC relief policy of 12.04.2012 or any other future EDC relief policy announced by the DTCP
2.	General Power of Attorney to be issued by TFIPL in favour of FIPL (Seth Group) by 20.05.2015 i.e.
	within 15 days of execution of MoS to enable application for Occupancy Certificate and Completion.
3.	Bifurcation of license- TFIPL is the license holder in respect of 48.03 acres Sector 89 Land and has sold development rights of 14.8 acres to Seth Group –  Application was to be made within 30 days for renewal for bifurcation/recording of beneficial interest. Mittal Group/TFIPL along with the Seth Group was to submit the same latest by 30.10.2015  Seth Group has already applied in terms of the renewal letter dated 01.10.2015 on 30.10.2015 and have already made the payment towards administrative charges to the DGTCP.
4.	Renew the license till 2017 and as per undertaking on 26.10.2015 to renew till 2018.

2.4 It is the case on behalf of the Seth Group that as agreed and as per clause 1.2.1 of the MOS, Board resolutions were to be passed by TFIPL authorizing the Seth Group to avail the benefits under EDC relief policy of 12.04.2012 or any other future EDC relief policy announced by the DTCP, which resolution is not passed. It is the case on behalf of the Seth

Group that as per clause 5.3 of the MOS, TFIPL was required to issue General Power of Attorney in favour of FIPL (Seth Group) by 20.05.2015, i.e., within 15 days of execution of the MOS to enable applicants for occupation and completion certificate. It is submitted that no such General Power of Attorney has been executed. It is also the case on behalf of the Seth Group that as per clause 8 of the MOS, the licencees were required to be bifurcated in respect of 48.03 acres Sector 89 land to the extent of 14.8 acres for which the development rights were sold to the Seth Group. It is the case on behalf of the Seth Group that under clause 8 of the MOS, TFIPL was required to take steps for recording of change of beneficial interest to delineate the share of the Seth Group in the 48.03 acres land. According to the Seth Group, policy dated 08.02.2015 required that an NOC be given by TFIPL/Mittal Group which should have been given within 30 days of renewal of licence. It is the case on behalf of the Seth Group that TFIPL/Mittal Group instead issued a conditional NOC dated 19.04.2016 with 22 frivolous conditions, which conditions were contrary to the MOS and/or as per the requisite format as required by the DGTCP. It is submitted that consequently the said NOC was rejected by the DGTCP. It is submitted therefore that in effect, there has been no substantial compliance of the MOS regarding issuance of NOC by TFIPL/Mittal Group till date.

2.5. It is further the case on behalf of the Seth Group that under clause 17 of the MOS, it was the responsibility of the Mittal Group to obtain renewal of licence granted by DTCP in respect of the entire 48.03 acres of Sector 89 land. It is the case on behalf of the Seth Group that without any intention to actually renew the licence and to only comply with the order on paper, the Mittal Group applied for renewal of licence vide application dated 7.1.2016 without complying with any of the conditions of renewal. It is submitted that one of the conditions by the DTCP was the payment of EDC charges in terms of the EDC relief policy dated 12.04.2012. It is submitted that the said EDC charges were payable for the entire license land by TFIPL and as on that date amounted to Rs.59.05 crores. It is submitted that the Seth Group undertook to pay Rs.25.27 crores out of the total liability of Rs.59.05 crores on behalf of TFIPL of which Rs. 9.4 crores was already paid by the Seth Group. However, the Mittal Group failed to make payment of a single penny to the DTCP towards EDC either of the entire 59.05 crores or of the balance share payable after providing for 25.27 crores offered to be paid by the Seth Group on behalf of the Mittal Group 59.05 crores. It is submitted that as a consequence of the action/in-action of the Mittal Group, the application for renewal of licence was rejected by the DTCP.

2.6 It is the case on behalf of the Seth Group that the Mittal Group and TFIPL have deliberately and willfully not complied with/fulfilled their obligations under the MOS dated 4.5.2015 and therefore they have rendered themselves liable for the action under the provisions of the Contempt of Courts Act. It is submitted that non-compliance is deliberate and wilful.

2.7 It appears that Director of M/s Maximal Infrastructure Private Limited has also filed two separate contempt petitions being Contempt Petition No. 257/2016 and Contempt Petition No. 889/2017 against the Seth Group alleging non-compliance of the relevant terms/clauses of the MOS.

3. It is submitted by the learned counsel appearing on behalf of the petitioner Seth Group that Clauses 1.2.1, 12 and 3.2 of the MoS clearly contemplate that the Seth Group's liability as far as EDC liability of TFIPL would be limited to an amount of Rs.25,27,92,000/- out of the total liability payable by TFIPL to DTCP towards EDC being Rs.59.05 crores. It is submitted that immediately after entering into the MoS, Seth Group has undisputedly paid Rs.9.40 crores against its assumed liability of

Rs.25,27,92.000/- in favour of the Chief Administrator, DTCP. Seth Group in addition has also given a bank guarantee of Rs.6.65 crores to DTCP towards its EDC liability. It is submitted that after paying such huge amounts by Seth Group, the Mittal Group has not paid a single penny towards their part of the EDC liability and did not renew the license nor did it provide GPA, Board Resolution and/or unconditional NOC, as was required under the MoS, which was to be given to the Seth Group. This prevented Seth Group from getting DTCP to avail the benefit of the EDC Relief Policy and work out the payment schedule in order to clear its share of the EDC liability. It is submitted that as on the date of MoS, an EDC Relief Policy was in existence which allowed payment of EDC over various installments. The bank guarantee was specifically given by the Seth Group so that they could avail the benefits of the then existing EDC Relief Policy as specifically contemplated under Clause 1.2.1 of the MoS. The Seth Group has been prevented from availing the entitlement under the relief policy by the Mittal Group as the Mittal Group had and till date has no intention to repay its own EDC liability and /or to resolve the entire issue of bifurcation of Seth Group's portion of land, which was clearly contemplated in the MoS.

3.1 It is further submitted that violations on the part of the Mittal Group, namely, non-renewal of license bearing nos. 34, 35 and 36 of 2007; no steps are taken by the TFIPL to bifurcate the license; and non-issuance of GPA/NOC are deliberate and willful and contrary to the MoS and the basic intent and purpose of entering into the MoS which was to provide for complete severance of between the Seth Group and the Mittal Group from TFIPL and from the development of the 48.03 acres of land. It is due to the non-compliance of the obligations by the Mittal Group on the Seth Group and other stakeholders, the basic intent under the MoS has not been achieved.

3.2 It is submitted on behalf of the Seth Group that the effect of the non-compliance of the obligations by the Mittal Group on the Seth Group and other stakeholders is as under:

I. The basic intent under the MoS was to provide for complete severance of between the Seth Group and the Mittal Group from TFIPL and from the development of the 48.03 acres of land, which has not been achieved due to the defaults by the Mittal Group.

II. The severance cannot take place without recording of change of beneficial interest in the land, which in turn cannot be done without renewal of the License and without complying with the conditions stipulated by the DGTCP.

III. One of the conditions laid down by the DTCP for renewing the license was issuance of an NOC as per the requisite format. Since the NOC was conditional and not as per format, the renewal of license too has been rejected and the change in beneficial interest not being recording. This has rendered the entire settlement under the MoS as otiose and has led to parting of huge sums of money by the Seth Group without having the desired effect at all.

IV. The most important consequence of all this is that because of non-renewal of license coupled with non-bifurcation of the license, the Seth Group has been unable to handover the possession to 700 flat owners of its Project 'Ferrous City' on the 14.80 acres of land falling in its share. It has further been unable to sell and/or utilize the unsold stock of 126 flats which can be utilized to generate funds to pay the only remaining outstanding liabilities of the Seth Group under the MoS.

3.3 It is submitted that in terms of Clause 5.8 of the MoS, the Mittal Group agreed not to

resign from the board of directors of TFIPL and not to transfer majority/controlling shareholding of TFIPL till renewal of licenses. However, perusal of the recent Balance Sheets of TFIPL shows that the said Balance Sheets have not been signed by the Mittal brothers namely Mr. Sumit Mittal (Contemnor No. 1) and Mr. Madhur Mittal (Contemnor No. 2), but has been signed by proxies of the contemnors. This has been done in order to avoid sanctions from this Court or any other Court.

3.4 Making the above submissions, it is prayed to issue the following directions:

(a) Direct Mr. Sumit Mittal (Contemnor No. 1) and Mr. Mathur Mattal (Contemnor No. 2) and TFIPL to pay the entire EDC liability of TFIPL in relation to License No. 34, 35 and 36 other than the share of the EDC liability which the Seth Group has undertaken to pay.

(b) Declare that Seth Group's EDC liability was only up to an amount of Rs.25,27,92,000/- out of the total EDC liability of TFIPL, in relation to License No. 34, 35 and 36 as on 24.3.2015 together with interest accrued thereon from 24.03.2015. Out of this, Seth Group has already paid Rs.9.40 crores vide DD No. 501599 dated 01.08.2016 and has also given a bank guarantee of Rs.6.65 Crores to DTCP towards its EDC liability. Seth Group is not liable to any other EDC payment in respect of License No. 34, 35 and 36.

(c) Direct DTCP to bifurcate the Seth Group's portion of the land.

(d) Direct DTCP to raise a fresh demand on TFIPL for the entire outstanding liability of TFIPL and set out the payment schedule as per their applicable EDC relief policy.

(e) Direct Mittal Group to renew the licenses as per their obligations set out under Clause 17, provide General Power of Attorney by TFIPL (as per clause 5.3) Board Resolution by TFIPL for availing benefit under EDC Relief Policy (as per Clause 1.2.1), NOC without any conditions (as per Clause 8) to the Seth Group.

(f) Direct Mr. Sumit Mittal (Contemnor No. 1) and Mr. Mathur Mittal (Contemnor No. 2) to deposit their passports in Court and list the matter after a few weeks to determine if the Mittal Group has complied with the orders passed by this Court. It is submitted that the above prayers will not only resolve the various issues between the Mittal Group and Seth Group but will also resolve the plight of various homebuyers who are suffering because of the fraud played by the Mittal Group who are not complying with any of their obligations under the MoS and are conveniently resigning from the companies which are owned and controlled by them after siphoning off moneys paid by the Seth Group to them so that they can evade any liability.

4. Miss Meenakshi Arora, learned senior advocate appearing on behalf of the respondent Mittal Group has submitted as under:

(i) Mittal Group/TFIPL/Maximal have not committed any breach or disobedience of the terms and conditions of the MoS dated 04.05.2015;

(ii) The contempt petition filed by the Seth Group is a farce, motivated and a ruse/ploy so as to create artificial/imaginary circumstances to cover up their willful and intentional acts of omission and commission of having failed to fulfill their obligations qua their allottees, who have invested in the project of the Seth Group, part of which is incomplete and the remaining

unsafe for habitation as per the report of the Commission appointed by the RERA;

(iii) In view of the order dated 01.10.2019 passed by RERA in Complaint No. 826/2018 - “Ferrous vs. Maximal” and Complaint No. 1402 of 2018 - “Maximal vs. Maximal”, the present contempt petition is rendered infructuous. The alleged issues/acts of disobedience raised by Seth Group have been delineated and put to rest by the competent authority - RERA, Haryana. RERA, Haryana has put to rest the following issues:

i)No objection to LC report filed;

ii)Major violation in Zone A;

iii) Grant of Occupation Certificate to the Developer in 48.038 acres of land under license No. 34-36/2007;

iv) Quantification of EDC liability and Mode and manner of payment of EDC liability qua respective developers including that of FERROUS project (developed by Seth Group);

v)Renewal of License qua each of developers;

vi)Condition of obtaining NOC for bifurcation of License from Licences  
i.e. MAXIMAL is no longer applicable;

vii) Direction to DTCP, Haryana to deal with flagrant deviations and violation in the construction at the project site;

viii) Prohibited from offering possession.

5. With respect to the obligations of the Seth Group, it is submitted as under:

<b>S. No.</b>	<b>Particulars</b>	<b>Amount (Rs. In Crores)</b>	<b>Reply of contemnors</b>
1.	Payment to Maximal	38.50	Seth Group defaulted in payment of the last instalment compelling the contemnors to file a Contempt Petition before this Court bearing No. 714/2015. It is on filing of the Contempt Petition that Seth Group in obedience of MOS paid the last instalment of Rs.6 Crore.

2.	License fee to DTCP, Haryana in terms of .clause 1.3	1.47	It is falsely stated that Rs.1.47 crores was paid by Seth Group. Seth Group paid Rs.93.50 lakhs approximately, proportionate to their share of land out of 48.038 acres situated in Sector-89, Faridabad. Clause 1.3 relied upon is to be read in conjunction with clause 2 of the MOS.
3.	Bank guarantee to secure payment of EBC (External Development Charges)	6.65	Seth Group in discharge of his obligation to pay furnished this BG, which is returnable to Seth Group. This condition is no longer applicable in view of the order dated 01.10.2019 (RERA).
4.	Bank guarantee to secure IDW (Internal Development Work)	3.55	Seth Group in discharge of his obligation to construct the project in accordance with law furnished this BG, which is returnable to Seth Group.
5.	Consultancy fee	0.25	The license was expired since the year 2009. There were enumerable formalities to be completed for

			renewal of license w.e.f. the date of its expiry. It was unanimously agreed to engage the services of a third party for the renewal of the license.
6.	Transfer of shareholding	50.00	<p>It is falsely stated that Rs.50 Crores was paid by Seth Group to Maximal.</p> <p>Seth Group held 500 shares in Maximal. Seth Group opted to divert their shareholding to exit from the Company. Mittal Group agreed to acquire the shares and paid consideration to Seth Group.</p> <p>It is therefore misleading and outrageous to mention that the transferor of shares viz., Seth Group paid any amount to the transferee (Mittal Group).</p>
7.	Total financial commitment	100.42	<p>That the amount mentioned is misleading and blatantly false.</p> <p>The Seth Group in lieu of land admeasuring 66.77 acres situated in Sector-70, Faridabad, which was fraudulently transferred have paid only Rs.38.50 crores to former owner i.e. Maximal against then market value of the said land which is approximately Rs.300 crores.</p>
8.	Payment to DTCP, Haryana	25.27	In terms of clause 1.2 of the MOS, Additional Document filed on 21.12.2029 (IA 197372), Seth Group undertook to pay Rs.25.27 crores together with interest to DTCP, Haryana on behalf of Maximal. In view of the order dated 01.10.2019 (RERA) this

			condition is no longer applicable.
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Now, so far as the obligations of the Mittal Group, it is submitted on behalf of Mittal

Group as under:

<b>S. No.</b>	<b>Particulars</b>	<b>MOS Clause</b>	<b>Reply of contemnors</b>
1.	Board Resolution	1.2.1	<p>A copy of the Board Resolution dated 29.05.2015 was forwarded to Seth Group. Seth Group while acknowledging the receipt approved the contents and sought cooperation, if any, issue arises in the absence of original resolution.</p> <p>The original resolution is part of the minute book and the extract thereof was shared with Seth Group on 29.05.2015.</p>
2.	GPA to be issued by TFIPL in favour of FIPL	5.3	<p>Under Clause 5.3 Additional Document filed on 21.12.2019 (IA 197372), it was agreed that TFIPL would execute a registered GPA in favour of FIPL. Till 29.05.2015 no one came from FIPL to get the GPA registered.</p> <p>An email was issued dated 29.05.2015 requiring Seth Group to furnish a Stamp Paper for GPA and also make themselves available before the office of Sub-Registrar.</p> <p>In response to the said mail Seth Group vide email dated 23.06.2015 informed that they do not want to register the GPA. This was in contravention to the agreed terms of</p>

			<p>MoS.</p> <p>As an abundant caution the Mittal Group on their own took the initiative of seeking approval of DTCP, Haryana to execute a registered GPA in favour of Seth Group to enable them to deal with their project without any impediment.</p> <p>Since the Seth Group did not come forward for collection of the GPA and its registration the Mittal Group through their attorney provided Seth Group duly executed GPA by the executants vide letter dated 04.07.2016.</p>
3.	Bifurcation of license & Non grant of NOC by Maximal	8	<p>NOC was provided by the contemnors and filed with DTCP, Haryana on 19.04.2016.</p> <p>NOC is acknowledged DTCP, Haryana and found in order vide note sheet dated 13.05.2016.</p> <p>As per “Clause-8”, parties agreed to jointly apply for change of developer i.e. from TFIPL, to FIPL in terms of the agreement dated 15.06.2007 and in terms of policy of DTCP, Haryana dated 18.02.2015.</p> <p>As per email dated 27.10.2015 the contemnors reiterated that filing of application is a joint obligation and all documents to be submitted in that regard with DTCP, Haryana are ready, however, as per conditions of policy the new entity was also</p>

			<p>required to submit various information, which the contemnors were not aware much less being shared with the said information.</p> <p>Seth Group in contravention to the joint obligation unilaterally applied for bifurcation of license. The application got rejected on 13.10.2016 for various reasons including lack of technical and financial capacity of the Seth Group. The rejection order since not assailed, attained finality.</p> <p>Before RERA, Maximal not only agreed to offer their cooperation for bifurcation of license but submitted that all formalities on the part of the land owner/licensee be dispensed with to expedite the same. This contention is accepted by RERA vide order dated 01.10.2019.</p>
4.	Renewal of license	17	<p>Maximal in terms of order dated 26.10.2015 agreed to apply for renewal of license on its expiry.</p> <p>Maximal applied for renewal of license on 07.01.2016 as license was expiring on 22.01.2016.</p> <p>Since there was inaction on the part of the department, Maximal filed a writ petition before Chandigarh High Court for direction against the department. While directing the department the Writ Petition was posted for hearing on 05.07.2016.</p> <p>DTCP, Haryana vide order dated</p>

			<p>04.07.2016 declined to renew the license for non-compliance of the conditions mentioned in “Para 3 and 4” of the order.</p> <p>The conditions mentioned in “Para 3” were fully complied with as recorded in the office note dated 25.01.2016.</p> <p>However, Maximal was prevented from filing any appeal/challenge against the said order dated 04.07.2016, as the Seth Group declined to pay EDC, which was a pre-requisite condition and a ground of rejection as mentioned in “Para-4” of the order dated 04.07.2016.</p>
5.	Responsibility to defend proceedings	20 of MOS	The Mittal Group and Seth Group were acquitted and an appeal filed by the complainant is pending adjudication .

6. Now, so far as submission on behalf of the Seth Group as regards non-payment of EDC to DTCP by Maximal, it is submitted that under the MoS dated 04.05.201 there is no such condition and/or obligation on the part of the Maximal to pay any EDC to DTCP. It is submitted that as such the same was not even the case so prayed in the contempt petition. The contempt petition filed by the Seth Group was limited and confined to the alleged disobedience by the Maximal as follows:

- a) Non-issuance of GPA.
- b) Non-issuance of Board Resolution.
- c) Non-issuance of NOC for bifurcation.

6.1 In fact, TFIPL/Maximal/Mittal Group in their contempt petition have subsequently pleaded disobedience of Seth Group by not paying External Development Charges (EDC) of license No. 34, 35 and 36 of 207 as determined by memo dated 27.03.2015 to Rs.25.27 crores (as on 24.03.2015) together with interest in terms of Clause 1.2.1 of the MoS and the undertaking given to this Court.

6.3 That there is no condition and/or undertaking of Maximal to pay the differential amount of Rs.33.78 crores in the MoS dated 04.05.2015 and thus no mode and

manner is provided in the MoS to pay the differential EDC amount i.e. 33.78 crores. This amount is payable by a separate and distinct entity TIDCO having the beneficial interest and ownership in land proportionate to which this amount is determined by the letter dated 27.03.2015 issued by DTCP, Haryana. The issue regarding payment of EDC by the project developer namely viz. TIDCO of Rs.33.78 crores (determined by letter dated 27.03.2015) being the beneficial amount as attained finality. The Memo dated 27.03.2015 is the mother document which defines the obligations of each of the parties and the same came into existence by taking into consideration the MoS dated 27.03.2015. It is submitted therefore that if the MoS dated 27.03.2015 is considered as non-existent, then the MoS dated 04.05.2015 must fall.

6.4 It is submitted that even otherwise the Maximal has no financial ability to pay any amounts. Maximal and other licensee divested of their right, title and interest in 48.08 acres way back in the year 2007-2008. The licensees are left with no interest in the project land. TIDCO is one of the project developers and has beneficial interest in part of the project land. Maximal as well as the Mittal Group have nowhere agreed to pay the amounts for and on behalf of the TIDCO being the beneficial owner of the project land.

6.5 It is submitted that the malafides of Seth Group are apparent and writ large from the very fact that on one hand Licensee in the larger interest are wanting bifurcation of license in favour of Seth Group and other co-developers of the entire land whereas the Seth Group have taken every possible course and has left no stone unturned to negate/nullify the bifurcation of EDC Liability vide letter dated 27.03.2015 and subsequent thereto bifurcation of license vide letter dated 01.10.2015. The change of beneficial interest has been allowed by RERA vide order dated 01.10.2019 and there is no stay of the order. It is the Seth Group who has failed to honour their obligation under the MOS and is trying to negate both the letters to create an artificial and imaginary alibi for not honouring their obligations under the MOS dated 04.05.2015 of paying EDC liability of Rs.25.27 crores together with interest accrued as on date.

6.6 It is submitted that as such Seth Group has not fulfilled its obligations/conditions/undertaking and paid the amount of Rs.25,27,92,000/- and therefore as such Seth Group is liable to be prosecuted and punished under the Contempt of Courts Act for which the respondents - Maximal/Mittal Group have filed the contempt petitions.

6.7 It is submitted that therefore there is non-compliance on the part of Mittal Group, much less the willful disobedience of the MoS and the order passed by this Court and therefore it is prayed to dismiss the contempt petition filed by Seth Group.

7. In reply, it is submitted on behalf of Seth Group that so far as the submission on behalf

of Mittal Group in their defence that there are large-scale violations in the construction undertaken by the Seth Group in the portion of the license to lands falling within the Seth Group area is concerned, it is submitted that the same has no relevance to the present contempt proceedings. What Seth Group does in its own share of the land is not relevant for the MoS in the present proceedings. The Mittal Group is only raising these issues in order to sidetrack the main issue that they have been in contempt of their undertaking before this Court. It is submitted that even otherwise FIPL of the Seth Group has cured its non-compoundable violations in its construction. It is submitted that if the bifurcation of the license had taken place, the frivolous issues raised by Mittal Group would have been the exclusive liability of the Seth Group. It is submitted that in any case and as submitted hereinabove, the Mittal Group has failed to fulfill its obligation under the MoS, which subsequently became the part of the order passed by this Court and the disobedience/non-compliance is deliberate and willful and for this they are liable to be prosecuted and punished under the Contempt of Courts Act.

8. Heard learned counsel appearing on behalf of the respective parties at length.

8.1 At the outset, it is required to be noted that as such the present proceedings are filed by the respective parties to the MoS dated 04.05.2015, which subsequently was made the order passed by this Court dated 05.05.2015 to initiate appropriate proceedings against each other under the provisions of the Contempt of Courts Act. It is not in dispute that all were parties to the MoS/consent order.

8.2 Before discussing the rival submissions made by the learned counsel appearing on behalf of the respective parties, the background which ultimately led to the MoS dated 04.05.2015 are required to be referred to and considered.

8.3 Criminal proceedings were initiated against Ashish Seth of Seth Group and others which was the subject matter before this Court in Writ Petition (Criminal) No. 5 of 2015. The disputes involved were commercial disputes. It appears that during the course of hearing, a suggestion was given, as the controversy in the case pertained to payment of money as alleged, that the matter be sent for mediation. This Court, with the consent of the parties, sent the matter for mediation, subject to Ashish Seth depositing a sum of Rs.10 Crore before this Court. That Ashish Seth deposited the sum of Rs.10 Crore. This Court requested Mr. Justice R.V. Ravindran, a former Judge of this Court, to mediate between the parties. Thereafter, learned Mediator mediated and initially submitted the interim report. The interim report of the learned Mediator reads as follows:

“This Hon’ble Court by order 09.02.2015, referred the matter to mediation so as to enable the parties to arrive at a negotiated settlement. In pursuance of the above, mediation meetings were held on 14.02.2015, 16.02.2015, 17.02.2015, 18.02.2015, 10.03.2015, 15.03.2015 and 17.04.2015 at New Delhi. The meetings were attended by Mr. Surender Seth and Mr. Ashish Seth with their counsel, Mr. Sachin Puri on one side, and Mr. Sunit Mittal and Mr. Mathur Mittal with their counsel Mr. Sanjay

S. Chhabra on the other side. After detailed negotiations and discussions and exchange of various alternatives, parties have arrived at a broad consensus, without prejudice to their respective rights and contentions. Parties are further negotiating to give shape to the terms agreed, in a manner which will effectively express what has been agreed, and put an end to the disputes and at the same time safeguarding their respective interests. As several issues relating to legal and taxation issues require to be sorted out with the advice of experts, the parties have not been able to finalize the terms and execute the Memorandum of Settlement.

On the joint request of the parties, further mediation meetings are scheduled for 11.04.2015, 12.04.2015 and 15.04.2015 for further negotiations and finalization of the draft Memorandum of Settlement. It is expected that the said process is likely to take at least two more weeks and, therefore, it is respectfully submitted that the time for completion of mediation process be extended till the end of this month.”

Thereafter, all the parties settled all the disputes and entered into the Memorandum of Settlement dated 04.05.2015. At this stage, it is required to be noted that the MoS dated 04.05.2015 was amongst (i) Shri Surender Seth; (ii) Shri Ashish Seth;

(iii) M/s Ferrous Forging Limited; (iv) M/s Ferrous Alloy Forging Pvt. Ltd.; (v) M/s Ferrous Township Pvt. Ltd. And (vi) M/s Ferrous Infrastructure Pvt. Ltd. (all belonging to Seth Group) as the first party AND (i) Shri Sumit Mittal; (ii) Shri Madhur Mittal (belong to Mittal Group) as the second party AND M/s Triveni Ferrous Infrastructure Pvt. Ltd. as the third party. The preamble of the MoS reads as under:

“PREAMBLE:

WHEREAS TFIPL is an Infrastructure Development Company in which the Seth Group represents that it holds 50% share (i.e. FFL and FAFPL have 33% and 17% shares respectively); and Mittal Group represents that it holds the remaining 50% share;

WHEREAS disputes arose among the Seth Group on the one hand and the Mittal Group on the other, with respect to lands admeasuring 37.58125 acres and 29.1953 acres, situated at Sector 70, Faridabad (Haryana) on account of Mittal Group claiming that the Seth Group should pay certain amounts to TFIPL and on account of certain issues relating to management and maintenance of statutory records and books of account of TFIPL.

WHEREAS the said disputes have given rise to the following legal proceedings which are either pending in Courts of Law and/or are under investigation by the Competent Authority:

(a) Company Petition bearing C.P. No. 158 (ND) of 2013 filed by FAFPL and FFL

against the TFIPL, Sumit Mittal, Madhur Mittal and others qua the affairs of TFIPL, pending before Company Law Board, New Delhi;

(b) Complaint Case No. 613/2014 pending before the Jurisdictional Magistrate at Agra (U.P.) arising from FIR No. 513/2014 against Surender Seth, Ashish Seth and others, registered at Police Station, New Agra, Agra;

(c) FIR No. 808/2014 against Surender Seth, Ashish Seth and others, registered with the Economic Offence Wing, New Delhi;

(d) CrI. M.C. No. 5621/2014 on the file of Hon'ble Delhi High Court (Ashish Seth Vs. State & Another);

(e) CrI. M.C. No. 5622/2014 on the file of Hon'ble Delhi High Court (Surender Seth Vs. State and Another);

(f) W.P. (CrI.) No. 5/2015 on the file of Hon'ble Supreme Court of India (Ashish Seth Vs. Govt of NCT of Delhi & Others);

(g) W.P. (CrI.) No. 11/2015 on the file of Hon'ble Supreme Court of India (Surender Seth Vs. Govt of NCT of Delhi & Others). WHEREAS Criminal Case No.235/2014, filed by one Mr. Hari Mohan Gupta (a witness in FIR No.513/2014) against Ashish Seth is pending before the Special Judge, Agra (U.P.) and Ashish Seth has filed a petition under Section 482 Cr.P.C. being Petition No. 134/2015, before the Hon'ble Allahabad High Court, for quashing the said proceedings.

WHEREAS the Hon'ble Supreme Court of India in the proceedings mentioned at Serial No. (f) and (g) above, vide Order dated 14.01.2015 referred the parties to mediation and subsequently, vide Order dated 09.02.2015 requested Justice R.V. Ravindran, former Judge of Hon'ble Supreme Court of India to act as a Mediator to assist the parties to arrive at a negotiated settlement; WHEREAS after deliberations and discussions between the two groups over several sittings, the parties have agreed to resolve all their disputes amicably as per the terms hereinafter set out.”

Thus, the parties entered into the MoS and agreed to resolve all their disputes amicably. Therefore, as such, all the parties to the MoS dated 04.05.2015 are bound to comply with the relevant terms and conditions and their respective obligations. As per the terms of the settlement agreed between the parties, there are certain obligations to be fulfilled by the respective parties, which the respective parties are bound to fulfill and comply with in its true spirit. The obligations of Seth Group are specifically mentioned in Clauses 1 to 1.5.1. The Seth Group has further agreed and undertaken to perform their part of obligations with the Mittal Group and TFIPL as mentioned in Clauses 3 to 3.14 and Clause C. Similarly, the Mittal Group and TFIPL's obligations, representations and warranties are also specifically mentioned in Clause D, which are specifically mentioned in Clauses 5 to 5.9. As agreed between the parties and in consideration of the obligations in Clauses 1.1, 1.3 and

1.4 and on furnishing of all requisite bank guarantees as required in terms of Clause 1.2 by the Seth Group under the MoS, all FIRs, complaints and cases mentioned in Clause 6.1 to Clause 7 were required to be withdrawn/quashed/ cancelled/ terminated. The joint obligation of the parties are specifically mentioned in Clause F (relevant Clauses 8 & 9). As per Clause 10, TFIPL and Mittal Group confirmed that there are no outstanding claims of Seth Group or any of its constituents under the agreement dated 15.07.2007 in respect of FSI admeasuring 11,28,204 Sq Ft. including FSI for EWS calculated on a total area of 14.80 acres on the land situated in Sector 89 Faridabad under License Nos. 34, 35 and 36 of 2007 granted in the name of TFIPL and others. Clause 12 which is an important and relevant clause reads as under:

“12. It is hereby confirmed that other than the payment of the EDC amount required to be made under Clause 1.2.1 and under Clause 3.8 above, Seth Group shall not be liable for any other EDC payment under License Nos. 34, 35 and 36 of 2007 either on renewal and/or upon bifurcation of License Nos. 34, 35 and 36 of 2007, except to the extent of Rs.25,27,92,000/- together with interest accrued thereon from 24.03.2015, imposed by DTCP, Haryana. It is further clarified that the liability to pay EDC of Seth Group in a sum of Rs.25,27,92,000/- against the total EDC liability of Rs.59.05 crores as on 24.03.2015, shall not be varied subject, however, to the condition that in the event of the total liability, which has been assessed at Rs.59.05 crores as on 23.04.2015, being revised from Rs.59.05 crores, to any higher amount as on 24.03.2015, on account of revised calculation or similar reason. In such eventuality, the Seth Group will bear the proportionate increase in regard to the amount in excess of Rs.59.05 crores.”

Clause G is specifically with respect to renewal of licenses, more particularly, license Nos. 34, 35 and 36 of 2007. The relevant clauses with respect to renewal of licenses are Clauses 17, 18 and 19, which read as under:

17. Mittal Group shall apply for renewal of license by 23.06.2015 subject to compliance of clause 1.2 (to the extent of providing Bank Guarantee), 1.3 & 1.4 by the Seth Group. The Seth Group have provided documents/undertakings with respect to the lands falling to share of the Seth Group under Agreement dated 15.06.2007, i.e. (i) Status of construction/allotment of EWS Flats, and (ii) Service Plan status, its drawing, estimates and its approval from HUDA, Chandigarh annexed as Annexure-16, to enable Mittal Group to apply for renewal of license. Seth Group does not have any further document in this regard, however, it is clarified that in case any indemnity, undertaking, letter and/or similar document is required to be executed after filing of the application for renewal of license, pertaining to the lands falling in the share of Seth Group under Agreement dated 15.06.2007, Seth Group shall do the needful at the earliest if so requested by Mittal Group.

18. On application made for renewal of license in terms of clause 17, Mittal

Group will secure renewal of license within 90 days. All administrative and miscellaneous charges, compounding fee, penalties and other charges levied and payable by PAL, ORS and Heritage for renewal of license shall be paid by the Mittal Group. All such charges in respect of FIPL agreement shall be exclusively paid/borne by Seth Group by similarly paying to TFIPL immediately on being demanded.

19. Seth Group shall pay a sum of Rs.25,00,000/- (Twenty Five Lacs only) to Mittal Group for hiring/engaging consultancy services for renewal of License Nos. 34, 35 & 36 of 2007 in favour of TFIPL at the time of filing of the application for renewal of license by the Mittal Group.”

As per Clause 27, with the execution of the said MoS and subject to compliance of undertaking and fulfillment of all obligations of the Seth Group and Mittal Group/TFIPL as undertaken in the MoS, it was agreed between the parties that all pending disputes amongst the parties. shall stand resolved and TFIPL and/or Mittal Group have no claim of any nature against the Seth Group and similarly Seth Group shall have no claim of any nature against the TFIPL and/or Mittal Group. The MoS further provides the consequences of breach/non-payment of the amounts. The relevant clauses are Clauses 36, 37 and 38, which read as under:

“36. In the event of any default by Seth Group of their obligations and warranties, the Mittal Group and TFIPL will be entitled to initiate legal proceeding for enforcing performance of the obligations/warranties given by Seth Group, including initiation of contempt proceedings against the Seth Group in accordance with law.

37. In case there is a default in payment as agreed in Clause Nos. 1.1, 1.3 & 1.4 of furnishing of all requisite Bank Guarantees as required in terms of clause 1.2 by the Seth Group, the Mittal Group and TFIPL will also be entitled to approach the Hon’ble Supreme Court for revival of the complaints/FIRs stated at serial Nos. (b) & (c) of the list of cases mentioned in the preamble above. Provided however, on Mittal Group and TFIPL obtaining performance of the obligations, the revised criminal proceedings and contempt proceedings, if any, shall be terminated.

38. In the event of any default by Mittal Group of their obligations and warranties, the Seth Group will be entitled to initiate legal proceeding for enforcing performance of the obligations/warranties given by the Mittal Group, including initiation of contempt proceedings against the Mittal Group in accordance with law.”

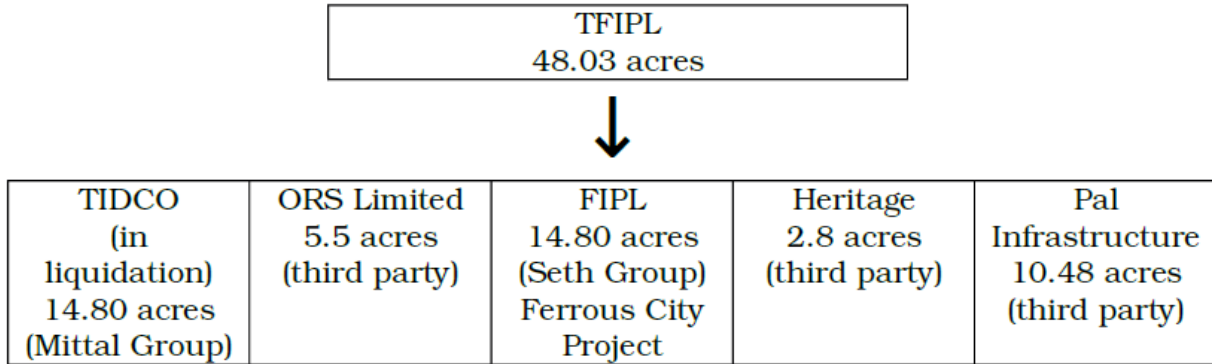
This MoS was placed before this Court in the aforesaid Writ Petition and this Court recorded the settlement in entirety and as agreed between the parties and as prayed, the MoS dated 04.05.2015 became a part of the order and this Court directed the parties to adhere to the terms and conditions of the settlement and the undertakings given therein. This Court specifically further observed that every facet of it shall tantamount to an order

of this Court and in case of failure the parties shall be at liberty to move this Court for an appropriate direction. Thus, as per the MoS and even as per the order passed by this Court dated 05.05.2015, all the parties to the MoS shall have to comply with and/or fulfill their respective obligations as mentioned in the MoS dated 04.05.2015. As observed hereinabove, the disputes were commercial disputes and therefore all the parties to the disputes agreed to resolve all their disputes, which culminated into the MoS and thereafter the order passed by this Court.

9. The entire object and purpose of entering into the settlement was to resolve all the disputes between the parties. Therefore, it is the duty of the Court that the settlement entered into between the parties and the consent order passed by this Court should be given effect to in its letter and spirit. All the parties to the consent terms are required to fully comply with the terms of settlement/consent terms and the consent order. One party cannot be permitted to say that that portion of the settlement which is in their favour be executed and/or complied with and not the other terms of the settlement/consent terms/consent order.

9.1 From the facts narrated hereinabove and even otherwise considering the relevant clauses of the MoS and the obligations to be fulfilled by the respective parties to the MoS, it appears that Seth Group have fully complied with their obligations, except deposit of the total amount of Rs.25.27 crores - payment to DTCP towards initial liability of Rs.59.05 crores of TFIPL. It appears that Seth Group have already paid Rs.9.40 crores against the total liability of Rs.25.27 crores towards EDC liability against the total liability of Rs.59.05 crores of TFIPL as per Clause 1.2. It appears that the balance amount is not deposited by the Seth Group as the Mittal Group have not fulfilled their obligations under the MoS. It is stated at the bar that the Seth Group is always ready and willing to fulfill their obligations in terms of the MoS, i.e. their liability as per Clause 1.2, subject to Mittal Group fulfill its obligations. From the material on record, it appears that the Mittal Group have not fulfilled their obligations as per Clause 1.2, Clause 5.3 and Clause 8. Neither the Mittal Group nor TFIPL have deposited the balance amount to be paid towards EDC liability of Rs.59.05 crores (deducting Rs.25.27 crores to be paid by the Seth Group as per Clause 1.2). It is the case on behalf of the Mittal Group that it is the liability of the TIDCO and not the Mittal Group and in the MoS there is no specific term and the obligation that the said amount is to be paid by the Mittal Group. It is required to be noted that all the terms and conditions/obligations of the Seth Group, Mittal Group and TFIPL are required to be read conjointly. The license Nos. 34, 35 and 36 of 2007 are required to be transferred in favour of Seth Group. It appears that TFIPL acquired some land at Sector 70 and some 48.03 acres of land at Sector 89, Faridabad. TFIPL also availed licenses Nos. 34, 35 and 36 from the competent authorities in the year 2007 in respect of land bearing at Sector 89 with an intent to develop the Sector 89 land. Subsequently, however, both the parties - Seth Group and Mittal Group agreed that it would be the best that the development of the said land be divided and carried out separately and thereupon the development rights in the Sector 89 land parcel of 48.03 acres of land belonging to TFIPL was sold in the

manner mentioned as under:



The liability of Rs.59.05 crores was with respect to the entire land - 48.03 acres at Sector 89, Faridabad. Therefore, the liability of the Seth Group would be with respect to their share out of 48.03 acres which, as agreed between the parties, would come to Rs.25.27 crores and therefore the balance is naturally required to be paid by Mittal Group/TFIPL. Unless and until the entire amount is deposited with the DTCP towards EDC, the aforesaid licenses cannot be renewed and after renewal they are required to be bifurcated and transferred. As the Mittal Group has refused to deposit the balance amount of EDC (after deducting Rs.25.27 crores which is the liability of Seth Group as per Clause 1.2), the licenses are not being renewed thereafter. If the contention and the submission on behalf of the Mittal Group is accepted, in that case, the entire MoS would be unworkable and the purpose and object of the MoS to resolve all the disputes would be frustrated. As the Mittal Group has not fulfilled its obligations it appears that the Seth Group has not deposited the balance amount of EDC liability. At this stage, it is required to be noted that as per Clause 5.8 Mittal Group shall not resign from the Board of Directors of TFIPL and shall not transfer majority/controlling shareholding in TFIPL till renewal of licenses. As per the case of Seth Group, Mittal Group have retired from the Directorship of TFIPL and the balance sheet since then is being signed by the proxies.

9.2 As observed hereinabove, as per the MoS dated 04.05.2015 and even as per the order passed by this Court 05.05.2015, all the parties to the MoS are bound to fulfill their respective obligations. As observed hereinabove, Seth Group have fulfilled their obligations, except the payment of DTCP i.e. Rs.25.27 crores as per Clause 1.2 of the MoS (except Rs.9.49 crores which is paid).

10. Having heard the learned counsel for the respective parties and considering the material on record, we are of the opinion that the respondent Mittal Group in Contempt Petition No. 34 of 2016 have deliberately and willfully not fulfilled their obligations which they are required to fulfill under the MoS dated 04.05.2015 and as such they have rendered themselves liable for the action under the Contempt of Courts Act. However, before taking any further action, we propose to give further two months' time to the respondents,

namely, Shri Sumit Mittal, Shri Mathur Mittal and TFIPL to fulfill their part of obligations under the MoS dated 04.05.2015, more particularly,

- (i) To pay the entire EDC liability of TFIPL with interest in relation to license Nos. 34, 35 and 36 other than the share of the EDC liability which the Seth Group has undertaken to pay as per Clause 1.2 of the MoS;
- (ii) As per Clause 1.2, EDC liability of the Seth Group is to the extent of Rs.25,27,92,000/-, out of the total EDC liability of TFIPL in relation License Nos. 34, 35 and 36 as on 24.03.2015 together with interest accrued thereon from 24.03.2015. Therefore, the Seth Group shall make the entire payment of Rs.25,27,92,000/- along with the interest accrued thereon from 24.03.2015 towards their EDC liability in respect of License Nos. 34, 35 and 36 of 2007;
- (iii) The Mittal Group is hereby further directed to renew the license Nos. 34, 35 and 36 of 2007; to execute GPA by TFIPL (as per Clause 5.3), Board Resolution by TFIPL for availing benefit under EDC Relief Policy (as per Clause 1.2.1), NOC without any conditions (as per Clause 8) to the Seth Group.
- (iv) Thereafter, the DTCP to bifurcate the Seth Group's portion of the land in accordance with law and as per the policy and/or the rules and regulations, if any. It is also observed that it will be open to the respective parties to avail the benefit of the applicable EDC Relief Policy, which may be considered by the DTCP in accordance with the applicable EDC Relief Policy, if any.

10.1 The aforesaid entire exercise shall be completed within a period of two months from the date of lifting of lockdown in the concerned area, failing which, as observed hereinabove, this Court shall proceed to pass appropriate further order/orders under the Contempt of Courts Act for non-fulfillment of the obligations by the respondents - Shri Sumit Mittal, Shri Madhur Mittal and TFIPL. As observed hereinabove, this Court has deferred to pass further orders against the contemnors - Mittal Group and TFIPL to enable them to give them further opportunity.

11. In view of the above discussion and for the reasons stated above, we see no substance in Contempt Petition (C) No. 257 of 2016 and Contempt Petition (C) No. 889 of 2017 filed by the Mittal Group against the Seth Group. Under the circumstances, Contempt Petition (C) No. 257 of 2016 and Contempt Petition (C) No. 889 of 2017 deserve to be dismissed and are accordingly dismissed. List Contempt Petition (C) No.34/2016 in Writ Petition (Crl.) No. 5 of 2015 before this Bench immediately after three months.