

Pala Assets Holdings Ltd v Rolta, LLC
2021 NY Slip Op 32790(U)
December 21, 2021
Supreme Court, New York County
Docket Number: Index No. 652798/2018
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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PALA ASSETS HOLDINGS LTD, PINPOINT MULTI-
STRATEGY FUND, VALUE PARTNERS FIXED INCOME
SPC - VALUED PARTNERS CREDIT OPPORTUNITIES
FUND, and VALUED PARTNERS GREATER CHINA
HIGH YIELD INCOME FUND,

Plaintiffs,

- v -

ROLTA, LLC, ROLTA INDIA LTD, ROLTA
INTERNATIONAL INC., ROLTA UK LTD, ROLTA MIDDLE
EAST FZ-LLC, ROLTA AMERICAS LLC, and ROLTA
GOLBAL B.V.,

Defendants.
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INDEX NO. 652798/2018

MOTION DATE _____

MOTION SEQ. NO. 012

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 012) 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 414, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 444, 445, 446, 447, 448, 449, 485, 486, 488, 489, 490, 492, 501, 506, 507, 508, 509, 510, 518, 519, 524, 525, 526, 527, 528, 529, 530, 539, 540, 541, 542, 543, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 632, 633, 634, 635, 636, 637, 638, 639, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 663, 664, 669, 670, 671, 699, 700, 701

were read on this motion to/for CONTEMPT.

Upon the foregoing documents, the motion is granted for the following reasons:

Plaintiffs¹ Pala Assets Holdings Ltd (Pala), Pinpoint Multi-Strategy Fund, Value Partners Fixed Income SPC – Valued Partners Credit Opportunities Fund, and Valued Partners Greater China High Yield Income Fund move pursuant to CPLR 5251 and

¹ Pala initiated this action on June 6, 2018. (NYSCEF Doc. No. [NYSCEF] 1, Summons; NYSCEF 36, 3213 Summary Judgment Motion in lieu of Complaint.) Plaintiffs filed a supplemental summons adding all other plaintiffs. (NYSCEF 243, July 10, 2019 Supplemental Summons.) Plaintiffs' motion to remove Pala from the caption was denied. (NYSCEF 268, Decision and Order.)

Judiciary Law §753, imposing contempt sanctions on defendant and judgment debtor Rolta India Limited (RIL) and nonparty executives Kamal K. Singh² and Preetha Pulusani for refusing or willfully neglecting to obey the court's October 20, 2020 order [NYSCEF 389, Turnover Order] (Order) which requires RIL to turn over to plaintiffs, the judgment creditors, all cash on hand as well as shares and membership interests in certain subsidiary companies sufficient to satisfy the court's September 2, 2020 judgment in favor of plaintiffs. (NYSCEF 350, Judgment.) Plaintiffs move pursuant to CPLR 5251 for fines on RIL and its executives of sufficient size, \$1 million a day against RIL and \$10,000 a day against each of the executives, to end defendants' gamesmanship and coerce RIL's compliance with the Order. Subsequently, after a hearing at which Pulusani testified, plaintiffs asked the court to sanction Pulusani with a fine of \$10,000 per day, beginning November 23, 2020, the deadline for complying with the Order.

On September 2, 2020, the court entered judgment in favor of plaintiffs in the amount of \$183,196,227.71, with each defendant held jointly and severally liable for the full amount. (*Id.*) On October 16, 2020, the court entered a second judgment in favor of plaintiffs and against the defendants in the amount of \$25,763,000. (NYSCEF 387, Judgment.)³ Thereafter, on October 22, 2020, the court issued the Order. (NYSCEF 388, Short Form Order, NYSCEF 389, Order; NYSCEF 391, Oct. 22, 2020 tr.) The Order required defendants to turn over "all cash on hand" including the funds that

² Singh was not served with the OSC seeking contempt against him personally. (NYSCEF 701, tr at 165:23-169:17.) As he is allegedly resident in India (NYSCEF 423, Singh aff ¶2), plaintiffs are attempting service there under the Hague Convention. (NYSCEF 701, tr at 166:2-168:22.)

³ The court refers to the judgments collectively as the Judgment.

appeared in the prior year's annual report. (NYSCEF 389, Order at 2.) At oral argument, the court stated that defendants should turn over all cash within one week of the Order and turn over all shares and ownership interests sufficient to satisfy the judgment within 30 days of the Order. (NYSCEF 391, tr at 32-34 [Oct. 20, 2020].) The Judgment remains unpaid.

On October 20, 2020, RIL filed a petition with the Bombay High Court (NYSCEF 424) for an anti-enforcement injunction to prevent plaintiffs from enforcing the Judgment and Order in India. (NYSCEF 407, RIL Financial Statement [Nov. 11, 2020] at 2 n 3.) Plaintiffs were served with the Bombay petition on November 21, 2020. (NYSCEF 423, Singh aff ¶11.)

On October 29, 2020, six of the seven defendants filed for bankruptcy under Chapter 11, triggering a stay. Pulusani signed all of the petitions as "President International Operations" on behalf of all the filing defendants. (See NYSCEF 701, tr at 64:21-23 [April 28, 2021].) On January 26, 2021, the Bankruptcy Court "found that the Chapter 11 cases should be dismissed pursuant to 11 USC § 1112(b), for cause, including, lack of good faith" and "concluded that the Debtors did not have a realistic possibility of effectively reorganizing and merely sought, instead, to delay or frustrate the efforts of the Judgment Creditors to enforce their rights under the Turnover Order issued by the New York Court." (NYSCEF 626, US Bankruptcy Court, ND Alabama, Order at 9, ¶17.)

"To succeed on a motion to punish for civil contempt, the moving party must show that the alleged contemnor violated a clear and unequivocal court order and that the violation prejudiced a right of a party to the litigation." (*Cancilla v Vukosa*, 38 Misc

3d 1217[A], 2013 NY Slip Op 50121[U], *3 [Sup Ct, Kings County 2013] [citations omitted].) The moving party has the burden “of proving the contemptuous conduct by clear and convincing evidence.” (*Gray v Giarrizzo*, 47 AD3d 765, 766 [2d Dept 2008] [citations omitted].) In addition, “[i]n order to punish a judgment debtor for contemptuous conduct in reference to a CPLR Article 52 money judgment enforcement device, the judgment creditor must establish judgment debtor’s refusal or willful neglect.” (*TD Bank, N.A. v S. Shore Motor Grp., Inc.*, 35 Misc 3d 1233[A], 2012 NY Slip Op 50986[U], *4 [Sup Ct, Nassau County 2012] [citation omitted].) In this context, “[c]ontempt is willful when a party had the capacity to comply with a court order but did not make a good faith effort to do so.” (*CSX Transportation, Inc. v Emjay Envtl. Recycling, LTD.*, 2016 WL 755630, *5 [EDNY, Feb. 25, 2016, No. 12-CV-1865(JS)(AKT)] [applying CPLR 5251]; see also *Metropolitan Life Ins. Co. v Young*, 157 Misc 2d 452, 455 [Civ Ct, NY County 1993] [mens rea under 5251 is “‘calculated’, i.e., a deliberate, wilful failure”].) The main issue here is Pulusani’s capacity to comply with the Order.

“Although the contempt punishment is not available for the general enforcement of money judgments[,] it does serve as the sanction to implement several of the devices that Article 52 of the CPLR offers to aid in the money judgment enforcement process.” (*Home Heating Oil Corp. v Parris*, 65 Misc 3d 1216[A], 2019 NY Slip Op 51663[U], *4 [Civ Ct, Kings County 2019] [emphasis and internal quotation marks omitted].) Indeed, the text of CPLR 5251 permits the court to impose “contempt” sanctions on a judgment debtor for “[r]efusal or willful neglect . . . to obey a[n] . . . order granted, pursuant to this title.” “The power to punish a judgment debtor for civil contempt resides in” the court

issuing the judgment and “Section 753 et seq. of the Judiciary Law provide that the punishment may take the forms of fine and commitment.” (*Sure Fire Fuel Corp. v Martinez*, 75 Misc 2d 714, 715 [Civ Ct, NY County 1973].) For example, “[t]he wilful failure to comply with [a] . . . payment order can render a judgment debtor liable for punishment for contempt. Without this right there would be no power in the court to enforce its order.” (*Bank of Smithtown v Troy & Troy, P.C.*, 56 Misc 3d 1220[A], 2017 NY Slip Op 51107[U], *1 [Sup Ct., Suffolk County 2017] [citations omitted].)

A court has the power to levy contempt sanctions on corporate “principal[s] and officer[s]” in their personal capacities where they are “responsible for [the corporation’s] affairs and as such may be held personally liable for its contempt.” (*773 Fulton LLC v Brooklyn Cigar Bar Lounge Corp*, 66 Misc 3d 1231[A], 2020 NY Slip Op 50331[U], *7 n.5 [Civ. Ct., Kings County 2020] [citations omitted].) As long as the corporate officer “was properly served with the contempt motion, and had knowledge of the terms of the subject orders of which she was in violation, the court [i]s empowered to find her in contempt without plaintiff commencing a special proceeding.” (*Kozel v Kozel*, 161 AD3d 700, 701 [1st Dept 2018]; see also *Citibank, N. A. v Anthony Lincoln-Mercury, Inc.*, 86 AD2d 828, 829 [1st Dept 1982].) Here, plaintiffs seek penalties of \$10,000 per day against the executives.

A court also has the power to levy contempt sanctions of sufficient size to coerce compliance with its orders. (See, e.g., *Ardent Harmony Fund Inc. v Barrick*, 2019 NY Slip Op. 34007[U], *2 [Sup Ct, Nassau County 2019] [imposing fine on judgment debtor of “\$25,000 per day until compliance” with the court’s order, pursuant to CPLR 5251 and Judiciary Law §753].) For example, a fine of \$1 million per day was imposed under

Judiciary Law §751(a)(3) “in the nature of a coercive, per diem sanction meant to compel Local 100 to alter its conduct to comply with the December 13, 2005, order,” e.g., “to end the strike and get the transit system up and running.” (*New York City Transit Auth. v Transp. Workers Union of Am., AFL-CIO*, 35 AD3d 73, 88 [2d Dept 2006].) The amount of the judgment itself is an appropriate fine against a co-conspirator where “[t]he record reveals an elaborate scheme to defeat the collection of the plaintiffs’ judgment against the appellant’s husband, the judgment-debtor in the underlying action,” including the co-conspirator refusing to participate in the judicial process. (*Corpuel v Galasso*, 240 AD2d 531, 532 [2d Dept 1997].) Fundamentally, “once there [is] a New York judgment on the merits, the courts of this State [are] entitled to protect it” from “defendant’s harassing and bad faith foreign litigation.” (*Indosuez Intl. Fin., B.V. v Natl. Reserve Bank*, 304 AD2d 429, 430-31 [1st Dept 2003] [citations omitted].)

Defendants are a global information technology company with subsidiaries around the world (collectively Rolta Group). (NYSCEF 372, Pulusani aff ¶ 2.) In 2019, the Rolta Group employed about 1,500 people (NYSCEF 362, 2018-2019 RIL Annual Report at 08-09), but has since contracted to approximately 650 employees worldwide. (NYSCEF 372, Pulusani aff ¶ 2.) As of September 2020, the Rolta India Group had operations in approximately thirty office locations around the world. (NYSCEF 701, tr at 22:19-22.) The ultimate parent entity, RIL, is an Indian corporation that is publicly traded on the National Stock Exchange of India. (*Id.*) RIL’s financial statements showed that it had over US \$500,000 in cash and received millions of dollars in revenue, yet RIL has not turned over any cash to plaintiffs. (NYSCEF 402, Nov 3, 2020

Letter [Plaintiffs sent this letter to defendants, referencing defendants' list of RIL's banks, which list was not attached to the exhibit].)

Singh and Pulusani occupied leadership positions at Rolta Group during the relevant period. Singh is RIL's founder, chairperson, and managing director. (NYSCEF 423, Singh aff ¶1.) As discussed below, Pulusani held a variety of positions with Rolta Group, many simultaneously, whereby she was responsible for corporate affairs. Her final position was as president of defendant Rolta International, Inc. after which she became a consultant to Singh for which she is paid by Rolta Group.

With respect to the Order directing defendants to turnover cash, RIL produced (in response to plaintiffs' subpoenas) a schedule of bank accounts and balances as of September 2020 which show that RIL had over US \$500,000 in cash in the bank. (NYSCEF 402, Nov 3, 2020 Letter.) Plaintiffs demanded the cash pursuant to the Order, but RIL claimed that the majority of the funds were held at United Bank of India BI and were "effectively froze[n]" by the Indian tax authorities, and thus, could not be paid to plaintiffs. (NYSCEF 403, Nov 6, 2020 Letter [RIL to plaintiffs].) With respect to the remaining cash held at another bank, RIL claimed that all of the funds were needed to run its business, and therefore, could not be paid to plaintiffs either. (*Id.*)

On November 11, 2020, RIL published its (unaudited) financial statement for the quarter ending on September 30, 2020. (NYSCEF 407, RIL's Statement of Unaudited Standalone Financial Results for the Quarter and Six Months Ended September 30, 2020.) RIL reported that, as of September 30, 2020, it possessed ₹4 crore rupees, or

approximately \$539,355,⁴ of “[c]ash and cash equivalents,” and ₹2.46 crore rupees, or approximately \$331,703, of “[o]ther [b]ank [b]alances.” (*Id.* at 2.) Further, RIL reported that during the three months ending on September 30, it had earned ₹23.37 crore rupees, or approximately \$3,151,182, in “[r]evenue from operations” and “[o]ther [i]ncome.” (*Id.* at 1.) Notably, RIL’s financial statement did not indicate any bank accounts being frozen. This data applies to RIL and not its subsidiaries. None of these funds were paid over to plaintiffs in satisfaction of this court’s September 2020 judgment or October 2020 Order.

RIL also published a “consolidated” financial statement on November 11, 2020, regarding itself and all its subsidiaries. (NYSCEF 408, RIL’s Statement of Unaudited Consolidated Financial Results for the Quarter and Six Months Ended September 30, 2020.) That consolidated financial statement shows that as of September 30, the Rolta Group had ₹16.82 crore rupees, or approximately \$2,265,125, in “cash and cash equivalents,” and ₹3.11 crore rupees, or approximately \$418,819, in “other bank balances.” (*Id.* at 2.) It also shows that during the three months ending on September 30, the Rolta Group had earned ₹294.14 crore rupees, or approximately \$39,611,422, in “[r]evenue from operations” and “[o]ther [i]ncome.” (*Id.* at 1.) None of these funds were paid over to plaintiffs in satisfaction of this court’s September 2020 judgment or October 2020 Order.

RIL has failed to offer a credible explanation for its failure and its own financial reports contradict RIL’s claims of indigence.

⁴ According to defendants, the relevant exchange rate on September 30, 2020 was US\$1 to ₹73.56 relying on <https://www.investing.com/currencies/usd-inr-historical-data>. (NYSCEF 431, Defendants’ MOL at 3, n 3)

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As to Pulusani's contempt, plaintiffs have satisfied the requirements of Judiciary Law §753: (1) a determination "that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect"; (2) the "appear[ance], with reasonable certainty, that the order has been disobeyed"; (3) "knowledge of the court's order"; and (4) "prejudice to the right of a party to the litigation." (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015] [internal quotation marks omitted].)

The Judgment and Order are unequivocal. Defendants' objection to the term "cash on hand" as undefined and vague is laughable particularly given the discussion on the record. (NYSCEF 391, tr at 14:1-16, 15:1-17:24, 28:12-29:14, 31:25-32:3; NysceF 427, Dinesh Kapadia, RIL CFO, Jan. 5, 2021 aff.) Defendants owe plaintiffs over \$200 million. Therefore, the first requirement is satisfied.

Pulusani admittedly learned of both the Judgment and Order immediately. (NYSCEF 701, tr at 51:18-52:5; 51:1-4; 57:16-58:1.) She understood that the deadline for compliance was within 30 days. (*Id.* at 62:6-12; 64:24-65:4.) Therefore, the third requirement is satisfied.

As discussed below the second requirement is satisfied. The Order has been disobeyed by defendants and Pulusani who played a leading role in that disobedience.

Pulsani held positions of power. To start, in 2006, she joined RIL's board, a publicly traded company; a prestigious and powerful position she held for ten years. (*Id.* at 32:20-32:4.) Pulusani came to RIL from a leadership position at Integraph, an Alabama technology company. (*Id.* at 30:20-31:19.) "My last role was as President of what was called the Security Government and Infrastructure Division. It was about a four hundred million global business where we provided technology, GIS, primarily GIS

technology, mapping and geographic information systems technology to all of our affiliates around the world and to our distributors.” (*Id.* at 31:7-13.) As a result of this employment, she has known Singh for thirty years. (*Id.* at 30:13-16; 30:17-19; 31:2-3.)

Between 2008 and 2012, she held various positions at RIL, including Joint Managing Director, Strategic Technical Advisor, and Chief Strategy Officer. (*Id.* at 32:11-33:24.) In 2012, Pulusani entered into an employment agreement with RIL. (NYSCEF 553, Employment Agreement; NYSCEF 701, tr. at 18:2-19:6; Tr 20:9-21:3; 34:25-35:10.) Although Pulusani claims she was not an employee of RIL, the agreement clearly provides otherwise: “The Company,” defined in the preamble as RIL, “hereby employs the Executive and the Executive hereby accepts employment with the Company.” (NYSCEF 553, Employment Agreement ¶ 1.)

Additional terms underscore that she was not just the President of RIL’s US subsidiary. For example, the employment agreement provides that it is governed by the law of India and that disputes would be resolved in India. (NYSCEF 553, Employment Agreement ¶ 18; NYSCEF 701, tr at 37:21–38:13.) As part of her compensation, she was granted stock options for 500,000 shares of RIL stock. (NYSCEF 553, Employment Agreement ¶ 6; NYSCEF 701, tr at 152:21-153:8.) That Pulusani’s cash compensation may have been paid by Rolta International does not change the fact that she was employed by RIL.

Under the employment agreement, Pulusani had two positions: President, International (Americas) and President, Rolta International, Inc. (NYSCEF 553, Employment Agreement ¶ 3.) In these positions, Pulusani reported directly to Singh, the Chairman of Rolta India. (NYSCEF 553, Employment Agreement ¶ 3; NYSCEF 701,

tr at 36:9-19.) She was also a member of RIL's executive management team and as such was to "participate in strategic decisions affecting international business, participate in regular planning and review sessions as required by the Chairman and assist with investor relations, as appropriate." (NYSCEF 553, Employment Agreement, ¶ 3; NYSCEF 701, tr 37:3-6.) Pulusani's duties were set forth in paragraph 4 of the Agreement, which provides: "During the Term, the Executive shall devote her full work time and attention to work for the Company" The Annexure was a memorandum from Pulusani to Singh which describes the responsibilities that were "critical," including "significantly increased use of Rolta's offshore assets for the NA business," i.e., using assets in India for the business in North America. (NYSCEF 701, tr at 38:14-25; 40:1-10.) Other responsibilities included: "Communication with Chairman: candid, open, objective and of regular frequency - designed to efficiently arrive at decisions or direction, as needed." (NYSCEF 553, Employment Agreement.)

In 2016, Pulusani's position as President, Operations, expanded beyond the Americas to all international operation, at which point her title became President of International Operations. (NYSCEF tr at 88:21-24.) In the new role, Pulusani not only supervised Rolta International and its subsidiaries but also RIL's two other international subsidiaries: Rolta UK and Rolta Middle East. (*Id.* at 89:2-9, 149, 151:5-9; see *a/s/o* NYSCEF 555 Press Release; NYSCEF 550, Organization Chart.)

Pulusani communicated with Singh on a daily basis, with emails virtually every day and phone conversations two to three times per week. (NYSCEF 701, tr at 41:20-24.) She testified that if there were decisions that required Singh to approve, Pulusani

would make recommendations to him and discuss with him the options. (*Id.* at 42:17-43:6.)

Finally, she was the primary person in the Rolta India Group who was coordinating and facilitating the litigation in the U.S. and as such regularly communicated with U.S. legal counsel, including counsel in this matter. (*Id.* at 44:4-20, 45:17-25, 99:20-100:5.) Indeed, she also submitted six affidavits in this litigation (*Id.* at 45:9-16), including an affidavit in opposition to turnover on behalf of all defendants, including RIL [NYSCEF 372], as well as an affidavit in opposition to plaintiffs' special proceeding against Bank of Baroda and RIL. (See NYSCEF 449, Pulusani aff [Submitted in *Pinpoint Multi-Strategy Master Fund et al. v Bank of Baroda, N.Y. Branch, et al.*, Index No. 160048/2020 [Sup Ct, NY County].)

Pulusani insists that she lacked authority to comply with the Order. Rather, Pulusani claims that soon after the bankruptcy was dismissed on January 26, 2021, she spoke with Singh and explicitly told him that defendants should quickly "turnover the assets based upon the Turnover Order." (NYSCEF 701, tr at 67:7-11, 127:16-128:12.) In the weeks following the initial conversation, Pulusani had further conversations with Singh urging him to comply with the Orders. (*Id.* at 130:8-12.) When Singh did not approve her oral recommendation, Pulusani put her recommendation in writing on February 19, 2021. (*Id.* at 67:16-68:12, 130:16-131:1; NYSCEF 572, Memo [February 18, 2021].) Pulusani reassured Singh that the Rolta Group had "fought the good fight in trying to preserve the assets" and "the ongoing value of Rolta entities" by taking them through bankruptcy in order to "distribute the proceeds fairly amongst all creditors." (*Id.* at 69:5-10; NYSCEF 572, Memo at 1.) She wrote that she believed "the best option is

to turnover these assets to the Judgement [sic] Creditors.” (NYSCEF 572, Memo at 1.) She described this as “the only viable option that I see.” (*Id.* at 2.) Pulusani closed the memo with a request: “Please authorize me via a board resolution to ... turn over the Rolta International subsidiaries ... to the Judgement Creditors. I have made a recommendation on the subsidiaries owned by RIL in order to preserve their value for the named stakeholders. However, I leave it to you to determine how best to comply with the Order for those subsidiaries.” (*Id.* at 2.) Pulusani never received permission to transfer any entities. (NYSCEF 701, tr at 134:1-6.)

Accordingly, on March 16, 2021, Pulusani resigned after nearly 15 years with Rolta Group. (*Id.* at 70:21-25; 135:9-17.) She could not get permission to turn over the assets to mitigate her risk. (*Id.* at 71:2-11, 72:7-10; NYSCEF 572, Memo at 2.) In her resignation letter, she resigned her position with Rolta International, and “all roles as employee” in the Rolta Group. (*Id.* at 135:16-136:2; NYSCEF 574, Resignation Letter.)

The day after she resigned, she entered a consulting agreement with Rolta UK. (NYSCEF 576, Consulting Agreement; NYSCEF 701, tr at 74:1-9.) Pulusani testified that she only plays a “transition” role, but she admitted that the consulting agreement contains no such limitation. (NYSCEF 701, tr at 75:7-76:11.) The agreement provides: “During the Term, the Consultant shall provide strategic, legal and operational support based on the specific requirements and direction of the Chairman. . . . The consultant will be providing these consulting services to Company and its affiliates as determined by the Chairman.” (NYSCEF 576, Consulting Agreement ¶ 4.) She reports directly to Singh. (*Id.* ¶ 3.)

Complying with the Order was not optional. While it was allegedly Pulusani's practice to seek Singh's counsel, she was President of Rolta International. She also ran Rolta Group's subsidiaries all over the world. Without Pulusani's communications with Singh, it is impossible to corroborate her claim. If Pulusani is to be believed, her options were to comply with this Court's Order or resign—not continue for 113 days with the power as President to comply with the Order.

Pulusani is not credible. She was long winded and evasive. Significant testimony was contradicted by contemporaneous documentary evidence. For example, she attested that she was “neither a principal, employee, nor officer of Rolta India” to establish that she had no control over RILs decisions. (NYSCEF 432, Pulusani aff ¶ 5.) This was inaccurate because her Employment Agreement defines “Company” as RIL. The Annexure to her employment agreement states she was an employee of Rolta International (NYSCEF 533, Employment Agreement at ROLTA019332; NYSCEF 701, tr at 83:8-21); the two are not mutually exclusive. She cannot explain away the prior statement by claiming that she “did not focus on the details of that Agreement” while she repeatedly testified that she was “very familiar” with her employment agreement. (NYSCEF 701, tr at 81:13-14; 81:24-82:5; 91:22-23.)

Another contradiction is Pulusani's service on the RIL board. She testified that she was on the board from 2006 to 2016. (*Id.* at 32:1-5.) However, in a February 12, 2016 press release, RIL stated that she would continue her service on the board. (NYSCEF 525, Press Release at 1/3.)

Although Pulusani testified that she wrote to Singh almost daily, the only written evidence reflecting that Pulusani recommended compliance with the Order was an

email with an attached memo that she sent to Singh on February 19, 2021, two days after this court heard argument on this OSC at which sanction options were discussed including jail. (NYSCEF 699, tr at 38:17-39:8, 41:22-42:8, 42:18-23 [Feb 17 2021].) Finally, and most importantly, Pulusani's claim of lack of independence is contrary to her entire career beginning with her role as President of Integraph's Security Government and Infrastructure Division, a \$400 million global business, to her seat on RIL's board, a billion dollar publicly traded company at the time, to her role as president of Rolta International and leader of Rolta Group's international operations.

Given Pulusani's lack of credibility, she cannot fail to comply with a court order relying on the advice of counsel without documentary evidence of such advice, which was not supplied to the court. The authority that Pulusani cites is not contrary. A person accused of contempt has a right to present a defense and the right to assistance of counsel in the contempt proceedings which Pulusani has clearly been afforded in these proceedings. (22 NYCRR § 604.2; NY Judiciary Law § 770.4.) These rights do not shield a contemnor's underlying conduct merely because it involved obtaining or making recommendations based on legal advice. Advice of counsel is no defense to civil contempt. (See, e.g., 21 NY Jur. 2d, Contempt § 101 ["Ordinarily, it is no defense to a contempt proceeding that the party acted, or failed to act, upon the advice of counsel."]; *In re Chiaro*, 28 Misc. 3d 690, 696 [Sup Ct, Suffolk County 2010] [in civil contempt motion under Judiciary Law 753, rejecting defense that defendant "may have relied on the advice of counsel in resisting his obligations"].)

The court cannot rely on Pulusani's alleged email communications with Singh because they were not produced prior to the hearing. In response to plaintiffs'

document requests served in connection with this motion, defendants withheld over 400 responsive documents on the basis of attorney-client privilege, including emails between Pulusani and Singh that purportedly reflect advice from counsel. (NYSCEF 671, Simonson aff.) Privilege is waived where client “places the subject matter of the communication in issue or where the invasion of the privilege is required to determine the validity of the client’s claim or defense and application of the privilege would deprive the adversary of vital information.” (*IMO Indus., Inc. v Anderson Kill & Olick, P.C.*, 192 Misc 2d 605, 609 [Sup Ct, NY County 2002] [citations omitted]; see also *Tupi Cambios, S.A. v. Morgenthau*, 44 Misc 3d 800, 805–06 [Sup Ct, NY County 2014] [waiver where “truth of the parties’ position can only be assessed by examination of a privileged communication,” and plaintiff placed subjects key to viability of claims and defendant’s defenses at issue].) Pulusani’s arguments subject her communications with counsel and with Singh (regardless whether counsel was copied) to scrutiny. Therefore, within 10 days of this order, defendants shall turnover all communications between Pulusani and Singh between September 2, 2020 and March 16, 2021, as attorney client privilege was waived.

Next, Pulusani argues that compliance with the Order was excused by the automatic stay of 11 USC § 362. Pulusani’s reliance on the bankruptcy proceeding is no defense. On January 26, 2021, the Bankruptcy Court granted plaintiffs’ motion to dismiss, because it found “the Debtor does not have a realistic ability to effectively reorganize.” (*In Re Rolta International, Inc.*, Case No 20-82282-CRJ11, Dkt No 224 [ND Al Bankr. Jan. 26, 2021], 1.) According to the bankruptcy court, the bankruptcy was filed in bad faith to gain a “tactical litigation advantage” in this action, for the

ultimate benefit of RIL. Thus, Pulusani's argument concerning a Federal Court's exclusive jurisdiction is irrelevant.

Further, Delaware law does not excuse Pulusani's noncompliance with the Order. As a Delaware corporation, Rolta International is managed by its board. (8 Del Code § 141[a].) Thus, major actions, such as declaring bankruptcy or transferring all of the company's subsidiaries, require board approval. (8 Del Code § 271(a); *In re N2N Commerce, Inc.*, 405 BR 34, 41 [Bankr D Mass 2009] [Delaware law requires board approval for bankruptcy].) The Rolta International board consisted of Pulusani and Singh. (NYSCEF 701, tr at 72:5-6; 91:16-19.) Pulusani was president of Rolta International with responsibility for all international operations of Rolta Group. If she did not have authority to comply with a court order, who did?

RIL did not comply with this court's order. RIL insists that it complied with the order by filing the necessary government proceeding in India to ensure any transfer complied with that country's laws. The only proceeding about which this court has been informed is RIL's efforts to stop plaintiff's from filing the judgment in India. (NYSCEF 424, Petition.) The petition sought an injunction prohibiting enforcement of the Order in India even though in early September RIL's bank accounts had US\$ 500,000.

(NYSCEF 403, Plaintiff's letter with list of bank deposits.)

As to the fourth requirement for contempt, plaintiffs have been prejudiced by the amount of the unpaid judgment. While the court considered a fine of \$200 million as an option, (*Corpuel v Galasso*, 240 AD2d at 532), the court adopts plaintiffs' more reasonable proposal to fine Pulusani \$10,000 per day. In the court's view, this lesser

amount is sufficient to coerce defendants' compliance, taking into consideration the \$200 million judgment and defendants' resources.

Pulusani is fined \$10,000 per day from November 23, 2020 until March 16, 2021, the date of her resignation as President of Rolta International with responsibility for International Operations. Plaintiffs assert that Pulusani's resignation is fictitious. While Pulusani became a consultant to defendants the day after her resignation, she no longer has the title of President and thus is no longer covered by defendants' D&O insurance. The bankruptcy filing days are included in the calculation of days because the Federal Court has determined that Pulusani's filing was in bad faith; she could have withdrawn her improper bankruptcy petitions and complied with the Order at any time.

Defendants are jointly and severally liable for this sanction. The court rejects defendants' argument that the fines are improperly punitive and vastly exceed the amount of fines that the CPLR authorizes for a violation of civil contempt. Defendants, including RIL, owe plaintiffs over \$200 million. Any sanction must be sufficient to coerce compliance.

As to Singh, plaintiffs shall inform the court by email of the status of service upon him under the Hague Convention. When service is complete, the court will restore this motion to the calendar and schedule a hearing.

Accordingly, it is

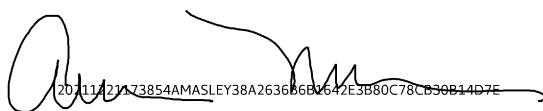
ORDERED that the motion is granted to the extent that the court finds that Preetha Pulssuani is in contempt of this court's October 20, 2020 Turnover Order; and it is further

ORDERED that Pulusani is hereby sanctioned by this court in the amount of \$1,130,000 and shall pay plaintiffs within 30 days of the date of this order; and it is further

ORDERED that written proof of the payment of this fine shall be provided to the Clerk of Part 48 and opposing counsel within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that in the event that such proof of payment is not provided in a timely manner, the Clerk of the Court, upon service upon him of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment, shall enter a judgment in favor of plaintiffs and against Pulusani in the aforesaid sum; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the Part shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).



<u>12/21/2021</u>		<u>ANDREA MASLEY, J.S.C.</u>	
DATE			
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE