

**Pala Assets Holdings Ltd v Rolta, LLC**

2023 NY Slip Op 31608(U)

May 11, 2023

Supreme Court, New York County

Docket Number: Index No. 652798/2018

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

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 - VALUE PARTNERS CREDIT OPPORTUNITIES FUND, and VALUE 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 N/A, N/A

MOTION SEQ. NO. 032 034

**DECISION + ORDER ON MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 032) 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1111, 1118, 1119, 1120, 1121, 1123, 1129

were read on this motion to/for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 034) 1108, 1109, 1110, 1117, 1124, 1126, 1127, 1128, 1130

were read on this motion to/for STAY.

Upon the foregoing documents, it is

In motion sequence number 032, plaintiffs Pinpoint Multi-Strategy Fund; Value Partners Greater China High Yield Income Fund; Value Partners Fixed Income SPC – Value Partners Credit Opportunities Fund SP renew their motion pursuant to Judiciary Law § 753(A) and CPLR 5251 for contempt against non-party Kamal K. Singh. Plaintiffs also requested permission to serve this contempt motion on Singh by email as alternate service pursuant to CPLR 308(5) which was granted on December 9, 2022 and is supplemented by this decision. (NYSCEF Doc. No. [NYSCEF] 1111, tr at 29:13-31:2.)

In motion sequence number 034, Singh moves pursuant to CPLR 5519(c) and 2201 to stay further proceedings on motion sequence number 032 pending appeal of this court's decision and order on motion sequence number 033, in which Singh seeks to vacate this court's OSC in motion sequence number 032 regarding service.

Plaintiffs have two judgments (NYSCEF 350 and 413) against defendants Rolta, LLC (Rolta);<sup>1</sup> Rolta India Ltd (Rolta India);<sup>2</sup> Rolta International, Inc. (Rolta International);<sup>3</sup> Rolta UK Ltd;<sup>4</sup> Rolta Middle East FZ-LLC;<sup>5</sup> Rolta Americas LLC;<sup>6</sup> and Rolta Global BV<sup>7</sup> with a balance of \$169,463,283.07.<sup>8</sup> (NYSCEF 535, plaintiffs' Apr. 1, 2021 letter to court at 2.) On October 20, 2020, the court issued a turnover order (Turnover Order). (NYSCEF 389, Turnover Order.) Instead of turning over its liquid assets, as directed by the court, Rolta India initiated a proceeding in India's Bombay High Court to enjoin plaintiffs from enforcing the Turnover Order. (NYSCEF 423, Singh aff [Jan. 25, 2021] ¶¶ 9-11; NYSCEF 424, Petition Before the High Court of Judicature

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<sup>1</sup> Rolta is a company existing under the laws of Delaware and is the Issuer of the 2018 Notes under the 2018 Indenture. (NYSCEF 11, 2018 Indenture at 8.) Pages refer to NYSCEF generated pagination.

<sup>2</sup> Rolta India is a company organized under the laws of the Republic of India and is the "Parent Guarantor" of the 2018 and 2019 Indentures. (*Id.*)

<sup>3</sup> Rolta International, Inc. is a company organized under the laws of Delaware and is a "Subsidiary Guarantor" under the 2018 and 2019 Indentures. (*Id.* at 21; *id.*, Schedule I at 127.)

<sup>4</sup> Rolta U.K. Limited is a company organized under the laws of the United Kingdom and is a "Subsidiary Guarantor" under the 2018 and 2019 Indentures. (*Id.* at 21, 127.)

<sup>5</sup> Rolta Middle East FZ-LLC is a company organized under the laws of the United Arab Emirates and is a "Subsidiary Guarantor" under the 2018 and 2019 Indentures. (*Id.*)

<sup>6</sup> Rolta Americas LLC ("Rolta Americas") is a company existing under the laws of Delaware and is the Issuer of the 2019 Notes under the 2019 Indenture. (NYSCEF 17, 2019 Indenture at 9.)

<sup>7</sup> Rolta Global B.V. is a company organized under the laws of the Netherlands and is a "Subsidiary Guarantor" under the 2019 Indenture. (*Id.* at 129.)

<sup>8</sup> With interest pursuant to CPLR 5003 and 5004, the total amount owing is \$204,103,474.23, as of October 26, 2022. (NYSCEF 1090, OSC [mot. seq. no. 032].)

at Bombay ¶¶ 43[a]-[d].) Meanwhile, the other defendants filed for bankruptcy.<sup>9</sup> The U.S. Bankruptcy Court dismissed the cases and denied motions to reconsider, finding that the cases were not filed in good faith but rather to gain a “tactical litigation advantage” in this proceeding. (NYSCEF 626, U.S. Bankruptcy Court Order at 21-22.)

For the reasons stated on the record on January 12, 2023, which is supplemented by this decision, plaintiffs’ motion for contempt is granted. Although Singh’s admitted and brazen willful disobedience would also satisfy punishment under Judiciary Law § 750(A), criminal contempt, the court limits its analysis to plaintiffs’ request for civil contempt.<sup>10</sup>

To establish civil contempt, the movant “must demonstrate with reasonable certainty that the respondent had failed to comply with a subpoena or order of the court.” (*Hynes v Hartman*, 63 AD2d 1, 3 [1st Dept 1978] [citations omitted].) The offending conduct must be found to have defeated, impaired, impeded, or prejudiced a right or remedy of the complaining party. (*In re Council 82, AFSCME, AFL-CIO*

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<sup>9</sup> NYSCEF 457, Order Dismissing Chapter 11 Case, *In re Rolta International, Inc.*, No. 20-82282-CRJ-11 (Bankr. N.D. Ala.); NYSCEF 459, Order Dismissing Chapter 11 Case, *In re Rolta Middle East FZ-LLC*, No. 20-82285-CRJ-11 (Bankr. N.D. Ala.); NYSCEF 458, Order Dismissing Chapter 11 Case, *In re Rolta UK Limited*, No. 20-82287-CRJ-11 (Bankr. N.D. Ala.); NYSCEF 460, Order Dismissing Chapter 11 Case, *In re Rolta Global B.V.*, No. 20-82284-CRJ-11 (Bankr. N.D. Ala.).

<sup>10</sup> Civil contempt is aimed at the “vindication of a private right of a party to litigation and any penalty imposed upon the contemnor is designed to compensate the injured private party for the loss of or interference with that right. Criminal contempt, on the other hand, involves vindication of an offense against public justice and is utilized to protect the dignity of the judicial system and to compel respect for its mandates. Inasmuch as the objective is deterrence of disobedience of judicial mandates, the penalty imposed is punitive in nature. Although the line between the two types of contempt may be difficult to draw in a given case, and the same act may be punishable as both a civil and a criminal contempt, the element which serves to elevate a contempt from civil to criminal is the level of willfulness with which the conduct is carried out.” (*McCormick v Axelrod*, 59 NY2d 574, 582-83 [1983], *amended*, 60 NY2d 652 [1983] [internal citations omitted].)

(*Campbell*), 268 AD2d 859 [3d Dept 2000] [citations omitted].) The movant bears the burden of proof by “clear and convincing evidence.” (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015] [citations omitted].) In this case, the evidence overwhelmingly clears that baseline.

Plaintiffs allege that Singh violated the Turnover Order by allegedly (i) “deliberate[ly] misreading” legal advice regarding Indian law to conclude that defendants could not comply with the Turnover Order until the judgment is domesticated in India; (ii) “personally approved the Settlement Agreement,” and (iii) “used his private companies . . . to systematically mislead Plaintiffs and the Court about Defendants’ inability to turn over cash as required by the Turnover Order.” (NYSCEF 1089, plaintiffs’ mem of law in support at 13.) Plaintiffs primarily rely on Singh’s deposition wherein Singh admitted to immediate knowledge of the Turnover Order. (NYSCEF 896, Singh Dec. 22, 2021 depo tr at 328:5-14.) Singh also decided that the Turnover Order did not apply to Rolta India. (NYSCEF 1086, Singh Aug. 2, 2022 depo tr at 605:5-15.)

As a preliminary matter, the court addresses Singh’s defenses.

### **Jurisdiction: Predicate Jurisdiction**

First, as to Singh’s objection to this court’s predicate jurisdiction over Singh because he is not a party to the action and has no connection to New York, the court finds that it has such personal jurisdiction over Singh, who resides in India, as to civil contempt.

To determine whether a New York court has jurisdiction over a non-domiciliary, a court must “first determine whether [New York’s] long-arm statute (CPLR 302) confers jurisdiction over it in light of its contacts with this State. If the [non-domiciliary’s]

relationship with New York falls within the terms of CPLR 302, we determine whether the exercise of jurisdiction comports with due process.” (*LaMarca v Pak-More Mfg. Co.*, 95 NY2d 210, 214 [2000].) CPLR 302(a)(3)(ii) provides for jurisdiction over a non-domiciliary who “commits a tortious act without the state causing injury to person or property within the state” if the non-domiciliary “expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce.” For jurisdiction under CPLR 302(a)(3)(ii), plaintiffs must establish:

“First, that defendant committed a tortious act outside the State; second, that the cause of action arises from that act; third, that the act caused injury to a person or property within the State; fourth, that defendant expected or should reasonably have expected the act to have consequences in the State; and fifth, that defendant derived substantial revenue from interstate or international commerce.”

(*LaMarca*, 95 NY2d at 214.)

Plaintiffs satisfy the requirements of CPLR 302(a)(3)(ii). As discussed in more detail below, (1) Singh admits that he took actions in India to avoid the Turnover Order and directed Pulusani to take actions in the United States to avoid the Turnover Order; (2) this contempt proceeding arises from Singh’s acts to avoid the Turnover Order; (3) Singh’s acts caused injury to plaintiffs in violation of their New York order; and (4) Singh should reasonably have expected the act to have consequences in the State since the Turnover Order issued from a New York court. Finally, in contempt cases against a corporate executive, the corporation’s international commerce satisfies the substantial revenue requirement for the individual executive too because the executive acts in concert with the corporation. Here, Rolta was authorized to raise \$200 million under the

2018 Indenture<sup>11</sup> and \$300 million under the 2019 indenture<sup>12</sup> such that Singh derived substantial revenue from interstate or international commerce.

Next, the exercise of jurisdiction over Singh comports with due process. The forum state may constitutionally exercise jurisdiction over non-domiciliary defendants if they have a certain minimum contacts with the forum state such that the maintenance of the action does not offend traditional notions of fair play and substantial justice.

(*LaMarca*, 95 NY2d at 216, citing *International Shoe Co. v State of Wash., Off. of Unemployment Compensation and Placement*, 326 US 310, 316 [1945].) The minimum contacts requirement is satisfied, and thus the non-domiciliary may “reasonably foresee the prospect of defending a suit there, if it “purposely avails itself of the privilege of conducting activities within the forum State.” (*LaMarca*, 95 NY2d at 216 [internal citations and quotation marks omitted].) In the contempt context, “[c]ourts routinely exercise personal jurisdiction in contempt proceedings over nonparties on the basis that nonparties may not assist, aid, or abet a violation of an order that directly binds a party over whom the court has personal jurisdiction.” (*Aviv v Brainard*, No. 18-CV-5088 [PKC], 2018 WL 4927912, at \*1-2 [SD NY Oct. 11, 2018].) Courts have held that “[t]he basis for exercising personal jurisdiction over the nonparty is ‘that intentionally violating an . . . injunction is conduct designed to have purpose and effect in the forum . . . .’” (*Id.* [citations omitted]; see *Tishman Construction Corp. v United Hisp. Constr. Workers, Inc.*, 158 AD3d 436, 437 [1st Dept 2018] [in a contempt proceeding, court “properly exercised jurisdiction over” a nonparty officer of a corporate defendant]; see also

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<sup>11</sup> Rolta LLC executed the 2018 Indenture. (NYSCEF 11, 2018 Indenture.)

<sup>12</sup> Rolta Americas executed the 2019 indenture. (NYSCEF 17, 2019 Indenture.)

*Citibank, N.A. v Anthony Lincoln-Mercury, Inc.*, 86 AD2d 828, 829 [1st Dept 1982] [“The court had the power to punish [defendant’s president] for contempt, regardless of whether he was a party to the underlying action or not”] [citation omitted].<sup>13</sup>)

Disobedience of this court’s order is the basis of jurisdiction over Singh because violating a court order is conduct designed to have purpose and effect in the forum where the order is issued. (*Aviv*, 2018 WL 4927912 at \*2.) Moreover, Singh admitted that he was aware of the New York Turnover Order. Thus, the court finds that jurisdiction over Singh comports with the traditional notions of fair play and substantial justice.

The court agrees with Singh’s reliance on *Keane v Kamin*, for the unremarkable proposition that predicate jurisdiction cannot be based on service alone. (94 NY2d 263, 265 [1999].) Here, it is not.

### **Jurisdiction: Service of Process**

Plaintiffs admit that they “unsuccessfully attempted to serve Singh in India pursuant to the Hague Convention” because, contrary to plaintiffs’ instructions, the process server served Rolta instead of Singh. (NYSCEF 1082, Geoffrey J. Derrick<sup>14</sup> aff ¶¶ 4, 8; NYSCEF 1083, email to process server [requesting service on Singh individually] at 2.) “Plaintiffs’ process server took 251 days to serve Rolta India, starting the Hague Convention process on August 5, 2021, and effecting service on April 13, 2022.” (NYSCEF 1082, Derrick aff ¶ 12.) It took another two months to inform plaintiffs

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<sup>13</sup> Contrary to Singh’s objection, *Citibank* remains good law and was not overruled. (See *Kozel v Kozel*, 161 AD3d 700 [1st Dept 2018].)

<sup>14</sup>Derrick is counsel for plaintiffs. (NYSCEF 1082, Derrick aff ¶ 1.)

of the defective service. (*Id.* ¶¶ 8-9.) To serve Singh under the Hague Convention in India, plaintiffs must begin the lengthy process anew. (*Id.* ¶ 11.)

In motion sequence number 032, plaintiffs also requested permission to serve this contempt motion on Singh by email as alternate service pursuant to CPLR 308(5). Singh insists on personal service in India under the Hague Convention as the sole method of service. On December 9, 2022, on the record, the court found that email service on Singh was good and comported with due process which is supplemented by this decision. (NYSCEF 1111, tr at 29:7-31:6.)

First, the court rejects Singh’s argument that personal service is required by the Hague Convention in India. More recent cases allow email service in India as consistent with the Hague Convention.

“While service of process by e-mail is not directly authorized by either the CPLR or the Hague Convention, it is not prohibited under either state or federal law, or the Hague Convention, given appropriate circumstances. Indeed, both New York courts and federal courts have, upon application by plaintiffs, authorized e-mail service of process as an appropriate alternative method when the statutory methods have proven ineffective.”

(*Alfred E. Mann Living Trust v ETIRC Aviation S.a.r.l.*, 78 AD3d 137, 141

[1st Dept 2010] [collecting cases].<sup>15</sup>)

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<sup>15</sup> See also *In re Bystolic Antitrust Litig.*, No. 20-CV-5735 [LJL], 2021 WL 4296647, \*2 [SDNY Sept. 20, 2021] [“Since Plaintiffs propose service by email, which is not specifically referenced in Article 10 or otherwise objected to by India, service by email is not prohibited by international agreement”], citing *Pearson Educ. Inc. v Doe 1*, No. 18-CV-7380 [PGG] [OTW], 2019 WL 6498305, \*2 [SD NY Dec. 2, 2019] [“Courts have repeatedly authorized service by email to defendants in countries, including India, that have objected to Article 10, finding that email is not included within the scope of Article 10.”].)

Under New York law, while personal service is preferable for service of a corporate executive charged with contempt by aiding a corporation's evasion of a court order, it is not necessary. (See *1319 Third Ave. Realty Corp v Chateaubriant Res. Dev. Co., LLC*, 57 AD3d 340, 341 [1st Dept 2008] [finding that sole owner and principal of plaintiff, who was a nonparty in that action, can be held in contempt based on plaintiff's disobedience of the order and judgment despite principal not being served with the judgments because plaintiff was served and was aware of the order and judgment]; *Lipstick, Ltd. v Grupo Tribasa, S.A. de C.V.*, 304 AD2d 482, 483 [1st Dept 2003] ["it defies credulity" that president of defendants did not know about "summons and complaint, default judgments, information subpoenas, contempt motion, and contempt order" and thus "can be punished for defendants' contempt, even though not a party" and "upon such notice as the court deems appropriate and accords with due process."] [internal citation omitted] [emphasis added].) Indeed, alternate forms of service are as likely, if not more likely, to securely and confidently reach the corporate executive and inform the executive of the proceeding.

Plaintiffs established, with numerous emails, produced by defendants on April 22, 2022, that Singh uses the email address "cmd@rolta.com" to conduct business. (NYSCEF 1082, Derrick aff ¶ 13; see, e.g., NYSCEF 1085, Feb. 26, 2021 email from Singh to Pulusani.) The "cmd" in the email address refers to Singh's title as Chairman & Managing Director of Rolta India. (See NYSCEF 1086, Singh Aug. 2, 2022 depo tr at 700:10-13.)

Plaintiffs also established impracticability under CPLR 308(5) sufficient to direct alternate service. The movant "must make some showing that the other prescribed

methods of service could not be made” or “would have been unduly burdensome.” (*JPMorgan Chase Bank v Kothary*, 178 AD3d 791, 794 [2d Dept 2019] [internal citations and quotation marks omitted].) The delay to serve and the delay to notify plaintiffs of the service combined with fact that to get such “expedited” service plaintiffs paid \$5,000, which resulted in the process server serving Rolta India, not Singh. (NYSCEF 1083, *Derrick* aff ¶ 9.) The delay combined with the process server’s incompetence satisfies the unduly burdensome standard and the court concludes that, effectively, service cannot be made personally.

Finally, Justice Suresh Chandrakant Gupte (ret.) opines on the procedure to enforce a judgment in India, but plaintiffs seek to enforce the Turnover Order here in the United States. (See NYSCEF 1119, Justice Gupte aff ¶¶ 8-10.) Therefore, and most respectfully, the court finds Justice Gupte’s affidavit most informative, but not on point.

### **Singh’s Contemptuous Activities**

Plaintiffs ask the court to hold Singh in civil contempt pursuant to Judiciary Law § 753(A) and CPLR 5251. Plaintiffs’ motion was granted because the civil contempt requirements are satisfied:

- (1) “[A] lawful order of the court, clearly expressing an unequivocal mandate, was in effect.” (*El-Dehdan*, 26 NY3d at 29 [internal citation and quotation marks omitted].)

The turnover order is a lawful, unequivocal mandate. (NYSCEF 389, Turnover Order.)

- (2) “[W]ith reasonable certainty, that the order has been disobeyed.” (*El-Dehdan*, 26 NY3d at 29 [internal citation and quotation marks omitted].)

Singh’s admitted contemptuous activities begins with Rolta India initiating a proceeding in the Bombay High Court proceeding to obstruct rather than to comply with this court’s Turnover Order. Rolta India asked the Bombay High Court to issue an order

restraining plaintiffs from “executing” or “taking any coercive action” against Rolta India with respect to the judgments or Turnover Order, permanently enjoining plaintiffs from “taking any coercive steps in respect of the shares held by [Rolta India] . . . in execution, pursuance of or compliance with” the judgments or Turnover Order, and declaring that the Summary Judgment and the Turnover Order are not final and binding.” (NYSCEF 424, Petition Before the High Court of Judicature at Bombay, ¶¶ 43[a]-[d].) Singh’s actions were, according to him, based on his reading of the memo provided by a law firm in India, Crawford & Bayley (Crawford & Bayley Memo), wherein the lawyers were asked to opine on the enforceability of this court’s orders and judgments in India. (NYSCEF 1086, Singh Aug. 2, 2021 depo tr at 605:17-607:4, 608:19-609:20.)

However, during Singh’s deposition, he could not point to where, in the Crawford & Bayley Memo, it stated that Rolta India could not comply with the Turnover Order. (See, e.g, NYSCEF 1086 Singh Aug. 2, 2021 depo tr at 611:12-613:16.)

Second, Singh directed Pulusani to file the bad faith bankruptcies. (See Pala Assets Holdings Ltd v Rolta, LLC, 2021 NY Slip Op 32790 [U], \*12 [Sup Ct, NY County 2021], *affd as mod*, 205 AD3d 457 [1st Dept 2022]; see also NYSCEF 572, Pulusani memo to Singh [Feb. 18, 2021].)

Third, Singh testified that Rolta India has re-routed its entire cashflow and day-to-day financial operations through two private companies in India that he controls—Rolta Private Limited and Rolta Overseas Private Limited. (See NYSCEF 1086, Singh Aug. 2, 2021 depo tr at 643:12-646:4; see also NYSCEF 896, Singh Dec. 22, 2021 depo tr at 351:16-352:3.) Singh admitted that he personally controls his private companies and

that those companies are holding and moving money on Rolta India's behalf. (See NYSCEF 1086, Singh Aug. 2, 2022 depo tr at 549:3-7, 652:18-19.)

Fourth, Singh was uncooperative at his depositions, and notably, refused to answer questions related to assets held by Rolta Overseas Private Limited or questions about Rolta Private Limited. (See NYSCEF 1087, Singh Aug. 9, 2022 depo tr at 1048:12-1050:5; NYSCEF 1070, Report of Special Discovery Master.<sup>16</sup>)

Fifth, the court directed defendants in the turnover order to get all necessary approvals to comply with the turnover order. (See NYSCEF 389, Turnover Order.) Rolta has yet to request permission from the Royal Bank of India.<sup>17</sup>

Finally, and most appalling, Singh extinguished Rolta International's receivable of approximately US \$188 million, due from Rolta India through a purported "Settlement Agreement" that was entered on March 31, 2021, the eve of this Court's order appointing a Receiver. (NYSCEF 985, March 31, 2021 Settlement Agreement.) Singh personally approved the Settlement Agreement in which Rolta India moved assets to India that could have been collected by the court-appointed Receiver. According to board meeting minutes, on March 29, 2021, the Board of Rolta International (consisting of Singh and Sateesh Dasari) agreed to engage Thompson Hine to draft the Settlement Agreement. (NYSCEF 897, Mar. 29, 2021 Meeting Minutes at 2.) However, Allerding stated to the Court at oral argument that the entire Settlement Agreement had been

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<sup>16</sup> The court wishes to thank the Special Discovery Master Richard Swanson who volunteered to help the court by supervising the deposition and the NYCLA Special Masters Program.

<sup>17</sup> This was stated during the argument on the motion on Jan. 12, 2023 and undisputed by Singh. Movant is ordered to efile the transcript to NYSCEF within 10 days of the date of this order.

unwound sometime after August 24, 2021: “The transaction -- the settlement was unwound. There was no money, cash, anything transferred as part of the settlement agreement. . . . They were book entries.” (NYSCEF 871, tr at 54:15-21 [Dec. 14, 2021].) Instead, Rolta India informed a regulator in India “our legal advisors in US had advised us to enter into a settlement agreement to ensure that true amounts which are recoverable by Rolta India are reflected, so that the receiver does not pursue Rolta India to recover export advance of USD 187.86 million.” (NYSCEF 1014, Aug. 20, 2021 Letter From Rolta India to the Foreign Exchange Department of India at 2.) Singh testified that Rolta India and Rolta International had “cancelled” the Settlement Agreement with a one-sentence memo dated August 30, 2021. (NYSCEF 896, Singh Dec. 22, 2021 depo tr at 358:19-360:24, 409:3-19, 421:5-422:6.) In fact, the claims between Rolta India and Rolta International had not been unwound. (*Id.* at 229:7-230:7, 405:11-417:11, 419:16-420:2.) Instead, in Singh’s own words, the \$188 million receivable was offset, which means that Rolta India no longer owes Rolta. (*Id.*)

(3) “[K]nowledge of the court’s order.” (*El-Dehdan*, 26 NY3d at 29 [internal citation and quotation marks omitted].)

Singh admitted he became aware of this court’s Turnover Order “immediately” after it was issued and understood that it required “shares of the companies to be turned over and cash of the companies to be turned over.” (NYSCEF 896, Singh Dec. 22, 2021 depo tr at 58:6-59:21.)

(4) “[P]rejudice to the right of a party to the litigation.” (*El-Dehdan*, 26 NY3d at 29 [internal citation and quotation marks omitted].)

Finally, plaintiffs are prejudiced by Singh's contempt because the receiver cannot reach the \$188 million receivable that was available in the US until it was transferred to Rolta India.

Therefore, Singh is responsible for Rolta's disobedience of this court's orders. "[A] party who assists another in violation of judicial mandate can be equally as guilty of contempt as the primary contemnor." (*McCormick*, 59 NY2d at 584.) A corporate executive will be held in contempt of the court when he actively participates in a corporate defendant's evasion of the court's orders. (See *Vastwin Investments, Ltd. v Aquarius Media Corp.*, 295 AD2d 216 [1st Dept 2002].) Singh is the Chairman, Managing Director, and Founder of Rolta India, the ultimate parent company in the Rolta Group. Pulusani, Rolta International's former CEO, testified that Singh is the ultimate decision-maker and exercises great control over the Rolta Group. (NYSCEF 701, evidentiary hearing tr at 94:1-4.) Singh is personally responsible for paying defendants' legal fees to Thompson Hines and directs counsel. (NYSCEF 842, amended engagement letter by Thompson Hine at 3.) Singh admitted that he personally controls his private companies and that those companies are holding and moving money on Rolta India's behalf. (NYSCEF 1086, Singh Aug. 2, 2022 depo tr at 549:3-7.)

### **The Penalty for Contempt**

"[A] court generally has power to punish for contempt only by fines or imprisonment, or both." (*Pitterson v Watson*, 299 AD2d 467, 468 [2d Dept 2002], citing Judiciary Law §§ 751 [1], 753 [A].) Judiciary Law § 773 provides:

"If an actual loss or injury has been caused to a party to an action or special proceeding, by reason of the misconduct

proved against the offender, and the case is not one where it is specially prescribed by law, that an action may be maintained to recover damages for the loss or injury, a fine, sufficient to indemnify the aggrieved party, must be imposed upon the offender, and collected, and paid over to the aggrieved party, under the direction of the court. The payment and acceptance of such a fine constitute a bar to an action by the aggrieved party, to recover damages for the loss or injury.”

Plaintiffs shall have judgment against Singh for \$187,863,538.77, which is the amount that Singh transferred out of Rolta’s United States subsidiary after this court issued a judgment. (*See MacArthur I, Inc. v Fields*, 188 AD3d 493, 493 [1st Dept 2020] [“The appropriate fine was the amount of debtor’s funds that respondent, in direct and knowing violation of the restraint, transferred out of the subject account to others, thereby definitively depriving plaintiff of those funds to collect against.”])

#### **Singh’s Motion Sequence Number 034**

Singh’s request for a stay of further proceedings on motion 032 is denied for the same reasons that his motion to vacate this court’s OSC (motion sequence number 033) was denied. However, this order is stayed to the extent that plaintiffs cannot sell the assets such as real property, condominiums, cooperatives, or artwork nor remove funds from Singh’s bank accounts. Plaintiffs may contact banks and financial institutions with subpoenas to freeze accounts and place liens on property until the appeal of motion sequence number 033 concludes.

Accordingly, it is

ORDERED that plaintiffs Pinpoint Multi-Strategy Fund, Level 33, Two International, Finance Center, 8 Finance Street, Central, Hong Kong; Value Partners Greater China High Yield Income Fund, 99 Queens Road Central, 43rd Floor, Central,

Hong Kong; Value Partners Fixed Income SPC – Value Partners Credit Opportunities Fund SP, with the address of 99 Queens Road Central, 43rd Floor, Central, Hong Kong, are directed to submit the transcript to be so ordered within 10 day of this order; and it is further

ORDERED that plaintiffs' request for permission to serve this contempt motion on Singh by email as alternate service pursuant to CPLR 308(5), was granted; and it is further

ORDERED that the motion is granted to the extent that the court finds that Kamal K. Singh, with the address 151 Maker Tower A, Cuffeparade, Mumbai 400005, India, is in contempt of this court's October 20, 2020 Turnover Order; and it is further

ORDERED that Kamal K. Singh is hereby sanctioned by this court in the amount of \$187,863,538.77 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 contempt sanction shall be provided to the Part Clerk of Part 48 and Part 48 ([SFC-Part48-Clerk@nycourts.gov](mailto:SFC-Part48-Clerk@nycourts.gov) and [SFC-Part48@nycourts.gov](mailto:SFC-Part48@nycourts.gov)); and it is further

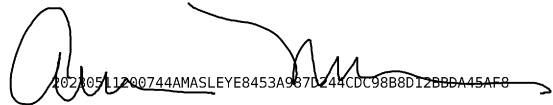
ORDERED that in the event that such proof of payment is not provided in a timely manner, the Clerk of the Court, upon service upon him of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment, shall enter a judgment in favor of plaintiffs and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

ORDERED that Singh's motion to stay further proceedings on motion sequence number 032 is denied, but this order stays plaintiffs from selling any personal or real property or removing funds from financial institutions as detailed above until the appeal of this court's decision on motion sequence number 032 is resolved or further order of the court. Likewise, Singh is barred from disposing of any assets.



5/11/2023

DATE

ANDREA MASLEY, J.S.C.

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