



Case No: CL-2021-000226

Neutral Citation Number: [2022] EWHC 1013 (Comm)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
QUEENS BENCH DIVISION
COMMERCIAL COURT

CL-2021-000226

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday, 1 April 2022

BEFORE:
MRS JUSTICE COCKERILL

BETWEEN:

PTPY ENERGY INVEST LTD

Claimant

- and -

MEHROTRA

Defendant

MR HO appeared on behalf of the Applicant
MR KAPOOR appeared on behalf of the Defendant

JUDGMENT
(Approved)

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MRS JUSTICE COCKERILL:

1. This is an application which comes before the court after a very long and somewhat complex history. The factual background in the proceedings is set out in the judgment of Butcher J of 25 February 2022, which I reproduce for ease of reference.
2. On 12 January 2020, ZAD Investment Limited (“ZAD”), Heritage Lane Oil and Gas Development Limited (“Heritage Oil”) and PTPY entered into a contract for the sale and purchase of crude oil. Under the crude oil supply contract, ZAD was the seller of the crude oil, Heritage was the buyer and PTPY was the financier.
3. The terms of the crude oil supply contract provided, amongst other things, that the parties committed to the delivery by ZAD to Heritage of one cargo load which they estimated would be delivered between 20 and 25 February 2020. PTPY was required to make an advance payment of US \$6 million, although the payment was to be made in the equivalent amount of Euros, to the bank account of Exmoor International FZE (“Exmoor”). PTPY would receive a personal guarantee in respect of the advance payment.
4. In accordance with the crude oil supply contract, on 12 January 2020 Mr Mehrotra provided a guarantee to PTPY personally guaranteeing the advance payment. Mr Mehrotra has since confirmed that he is a controlling power or controller of ZAD and Exmoor. On 16 January 2020, PTPY transferred the advance payment to Exmoor and receipt was acknowledged by ZAD on 17 February 2020. There were then a series of agreed delays to and deferrals of the delivery date. Ultimately, ZAD failed to comply with the terms of the crude oil supply contract and no cargo was delivered. PTPY then sought that Mr Mehrotra should pay back the advance payment. Despite promises, funds were not returned to PTPY, and the accounts were not settled.
5. Following Mr Mehrotra’s failure voluntarily to discharge his obligations under the performance guarantee, PTPY brought proceedings against him in LCIA arbitration no. 204944 to recover the sums due to it under the guarantee. During the arbitration proceedings, Mr Mehrotra gave a number of assurances that the outstanding sum would be repaid.

6. Payment in respect of the advance payment or of the other amounts claimed by PTPY was not received prior to the final Award of the LCIA tribunal which was issued on 24 March 2021. The tribunal found that the evidence established Mr Mehrotra's breach of the performance guarantee and made an award whereby it was declared: that repayment of the advance payment was due, owing and outstanding from Mr Mehrotra and that Mr Mehrotra had failed to make such a payment; that Mr Mehrotra should pay PTPY US \$6 million being the amount of the advance payment; and that Mr Mehrotra should pay PTPY pre and post Award interest and costs.
7. After receipt of the final Award, PTPY, on 16 April 2021, applied to the court under section 66 Arbitration Act 1996 for an order for leave to enforce the final Award and for judgment to be entered against Mr Mehrotra in the terms of the final Award. By an order dated 23 April 2021, Cockerill J granted that application. Mr Mehrotra did not, however, satisfy either the judgment or the final Award. On 1 June 2021, PTPY issued an application under CPR 71 seeking an order that Mr Mehrotra attend the court to provide information and produce documents within his control related to his means to pay the judgment debt.
8. On 21 June 2021, a sealed order was issued by the court ordering, amongst other things: that Mr Mehrotra appear before the Business and Property Courts on 28 July 2021 to provide information about the judgment debtor's means and any other information needed to enforce the Judgment Order; and further, that the judgment debtor, at that time and place, produce at court all documents in the judgment debtor's control which related to the judgment debtor's means of paying the amount due under the judgment and the order and which relate to those matters mentioned in paragraph 1 of the order (such documents to include those which were shown in an attached list).
9. That order and the accompanying documents were served on Mr Mehrotra on 30 June 2021 personally. The information hearing took place remotely on 28 July 2021 before Deputy Master Kay QC. PTPY was represented at the hearing. Mr Mehrotra did not attend that hearing nor did he produce any documents. 11 There was, however, a solicitor, Mr Mansouri of Mansouri & Son Solicitors, who did appear on Mr Mehrotra's behalf, although it was said that he was not formally instructed. On that

occasion, he informed the court of the following as to why Mr Mehrotra was not there.

Mr Mansouri said that:

“The position that he is in at the moment, sir, he tells me that he is in Scotland. He is involved in a delivery where his personal attendance was required, a delivery of some, I believe, crude oil, and apparently his personal attendance was absolutely required.”

10. Having heard that and similar submissions, Deputy Master Kay QC ordered a short adjournment during which Mr Mansouri contacted Mr Mehrotra on the telephone. Mr Mehrotra would not, however, and did not join the hearing. Mr Mansouri then informed the court that:

“I have spoken to Mr Mehrotra, sir, and his position is that he is currently at the offices of one of his customers. He states that he would be humiliated to have to participate in these proceedings within earshot of the people that he is dealing with.”

11. Deputy Master Kay QC described Mr Mehrotra’s non-attendance as:

“... the clearest possible contempt of court I have ever seen. Just non-attendance with no explanation. I mean, luckily he sought to get you [ie Mr Mansouri] to turn up and give some sort of explanation. The explanation of why he has not attended or not asked for an adjournment even, is simply unacceptable, in my view...”

12. As a result of Mr Mehrotra’s failure to attend court, Deputy Master Kay QC ordered, by an order dated 28 July 2021, that the matter was to be referred to a High Court judge under CPR rule 71.8(1). On 11 August 2021, the order that Deputy Master Kay QC had made, to which I have just referred, was considered by HHJ Pelling QC who determined that an order pursuant to CPR 71.8(2) and (3) could not be made as an affidavit in relation to service did not state how much of the judgment debt remained unpaid, as was required by CPR 71.5(1)(c). Subsequently, on 18 August 2021, I confirmed that HHJ Pelling QC’s decision was correct.
13. On 8 September 2021, the court listed a further information hearing at 10.30 a.m. on 7 October 2021 before Deputy Master Kay QC. The Second Information Order of that date provided for the questioning of Mr Mehrotra. It ordered, amongst other things:

- a. that Mr Mehrotra attend the Business and Property Courts before Deputy Master Kay QC at 10.30 on 7 October 2021 to provide information about his means and other information needed to enforce the judgment debt;
 - b. further, that Mr Mehrotra should, at that time and place, produce to the court all the documents in his possession which related to his means of paying the amount due under the judgment and Award and such documents were to include a number of which were shown in an attached list.
 - c. The Second Information Order included a penal notice which stated:

“You must obey this order. If you do not you may be sent to prison for contempt of court.”
14. The Directions Order and the Second Information Order were sent to Mr Mehrotra and to Mr Mansouri by way of email and cover letter from Pinsent Masons on 15 September 2021. The Orders were also personally served on Mr Mehrotra in accordance with CPR 71. The process server swore an affidavit on 4 October 2021 confirming the various matters referred to in CPR 71.3 to 71.5.
15. What has been called the Second Information Hearing took place remotely on 7 October 2021 before Deputy Master Kay QC. On that occasion, Mr Mehrotra attended the hearing, as did Mr Mansouri. Mr Mehrotra did not produce any documents at the Second Information Hearing. He confirmed that he had not produced any documents. During the course of his cross-examination, Mr Mehrotra acknowledged that he either had or could obtain a number of documents and asked the court for further time in which to produce them. During that cross-examination, Mr Mehrotra also said on a number of occasions that he would shortly satisfy the judgment debt.
16. Mr Mehrotra did not, however, answer two questions that were put to him in cross-examination. Firstly, he would not confirm the name of the counterparty that, he said, would shortly be making the payment to Exmoor which would permit the payment of the outstanding judgment debt. He declined to provide that information in open court claiming that he could not do so without permission. Secondly, Mr Mehrotra would not provide the name of the company whose offices he allegedly attended in Grangemouth

which was the reason given for his not attending the hearing on 28 July 2021. Mr Mehrotra stated that the party in Grangemouth was the receiving agent in the same transaction that would be used to repay the judgment debt and he would not identify it in open court.

17. Given Mr Mehrotra's conduct at the Second Information Hearing and in particular his failure to provide documents, PTPY invited the Deputy Master to refer the matter to a High Court judge under CPR 71.8. However, in light of Mr Mehrotra's promises during the course of the Second Information Hearing to provide the documents and his declining to identify third parties in open court, Deputy Master Kay QC gave Mr Mehrotra until 15 October 2021 to produce the relevant documents within his control relating to his ability to pay the judgment debt, save that he was given until 29 October 2021 to produce such documents which were located in or related to assets situated in the UAE. He also gave Mr Mehrotra the chance to answer the two questions which he had declined to answer by providing documents or answers in writing to PTPY.
18. The order that the Deputy Master made on 8 October 2021 reflected that position. Firstly, Mr Mehrotra was given until 15 and 29 October to produce documents. Secondly, insofar as Mr Mehrotra failed to provide documents that he was ordered to provide, he was required to write a letter to the court explaining the reasons for the failure to do so. Thirdly, PTPY was given liberty to apply for the matter to be referred to a High Court judge pursuant to CPR 71.8. The order was sent to Mr Mehrotra directly by the court. In accordance with paragraph 8 of the Order, it was also sent by email from Pinsent Masons to Mr Mehrotra on 8 October 2021 by way of service.
19. Mr Mehrotra did not produce all the relevant documents which he was ordered to provide both at the Second Information Hearing and by the 8 October 2021 Order. After the Second Information Hearing, the only documents which Mr Mehrotra produced were three documents which he sent to Pinsent Masons on 5 October 2021. These were: first, certain responses to document requests set out in Schedules A and B of the 8 October 2021 Order; secondly, a video which purportedly showed Mr Mehrotra driving in Scotland on 27 July 2021; and, thirdly, a set of return train tickets from King's Cross to Edinburgh dated 18 and 28 July 2021. He failed, however, to produce the answers or the documents which might have provided the answers to the

two questions, he did not write to the court to explain his reasons for failing to produce documents and he did not pay the judgment debt either in full or in part.

20. On 8 December 2021, PTPY applied to Deputy Master Kay QC to refer Mr Mehrotra's breaches of the Second Information Order to a High Court judge. Deputy Master Kay QC granted that application by the December Order. In that Order, he certified that Mr Mehrotra's failure to produce documents and failure to answer the two questions were breaches of the Second Information Order and referred both breaches to a High Court judge.
21. Pinsent Masons sent the December Order to Mr Mehrotra by email and courier on 20 December 2021. That led to the hearing which took place 18 March 2022 before Butcher J. Mr Mehrotra attended. He did not, however, produce any documents. He asked for further time to comply with his obligations to produce documents and information.
22. During his submissions on that occasion, he gave an oral answer to the first of the questions which he had previously refused to answer by saying that the contract with Exmoor was with O1 International B.V. Butcher J adjourned the hearing and the application for a suspended committal order for a week. He made an order that:
 - a. by 4.30 p.m. on 22 February 2022 Mr Mehrotra was to serve upon PTPY's solicitors all documents in his control which were located in or accessible from the United Kingdom that related to his means of paying the judgment debt and any other information needed to enforce the Judgment Order.
 - b. by 4.30 p.m. on Tuesday 22 February 2022 he was to serve on PTPY's solicitors a witness statement in his name verified by a statement of truth setting out to the best of his knowledge and belief:
 - i. the steps which he had taken or would take to produce all the documents in his control that are located in the UAE and if applicable any other jurisdiction save in England which relate to his means of

paying the judgment debt and any other information needed to enforce the Judgment Order;

- ii. confirmation that O1 International B.V. was the counterparty to the transaction with Exmoor, which transaction he had alleged during the course of his cross-examination on 7 October 2021 would provide the funds necessary for Exmoor to discharge the judgment debt on his behalf;
- iii. the name the subsidiary of O1 International B.V., that was involved in the transaction with Exmoor, and its role in the transaction; and
- iv. the name and address of all entities whose offices Mr Mehrotra alleged that he had attended in Grangemouth on 28 July 2021.

- 23. As Butcher J noted on 25 February, that Order was made, in essence, to give Mr Mehrotra a final chance to show commitment to complying with the court orders which had been made against him. On 21 February 2022 Pinsent Masons wrote to Mr Mehrotra, in advance of the deadline which was imposed by the Order for disclosure of the relevant documents in or accessible from the UK, identifying various examples of the categories of documents which they expected Mr Mehrotra to produce.
- 24. On 22 February 2022, Mr Mehrotra served a witness statement which was in purported compliance with the Order. Mr Mehrotra, however, did not produce any documents
- 25. On 25 February Butcher J made clear that he did not regard what had happened since the last hearing as being compliant with his order – particular as regards the absence of documents. Most importantly, no documents have been produced. Mr Mehrotra himself accepted today that he had not provided documents which he himself acknowledged he has consisting of WhatsApp messages relating to Exmoor. He has not produced any other documents either.
- 26. Mr Mehrotra gave no explanation in his short witness statement as to what steps he had already taken to obtain documents in Dubai. He also gave no explanation or detail, as

he had ordered, as to precisely what steps would be taken going forward in relation to the obtaining of those documents. He gave no information, of the entities whose offices he had allegedly attended in Grangemouth on 25 July 2021. As to information in respect of the transaction with Exmoor, the position certainly was not made clear and Butcher J took the view that the evidence which Mr Mehrotra gave had rather confused the position than clarified it.

27. In his judgment, Butcher J then considered the factual background and considered the application which was then before him in relation to the application for contempt. He considered the arguments that Mr Ho had advanced before him, and he concluded at paragraph 32 of the judgment:

“I have concluded that these points are in essence correct and do lead to the conclusion that I should now proceed to deal with the application for a suspended order for committal. I indicated that I was intending to do so at an earlier stage this morning and have heard submissions from both parties in relation to the application.”

28. He then considered the relevant law, and he said that he was satisfied that the relevant conditions had been complied with in relation to service and so forth. He also then said at paragraph 36:

“I am also satisfied so that I am sure that Mr Mehrotra has breached the second information order. He did not produce any of the documents he was ordered to produce and has still not. He did not answer the two questions. He did not answer them at all before last week, and although he has now provided something of an answer to the first question, albeit with a continuing lack of clarity, he has not answered the second question.”

29. He then went on to consider some more detail in relation to the absence of information, and at paragraph 39 he said this:

“I am left in no doubt that the non-compliance has been intentional. Mr Mehrotra could have complied, in large part at any rate, with the orders had he wished to do so.”

30. He then went on to consider whether the requirements for an order for committal were made out, looking carefully at the law. At paragraph 40 he said:

“I do consider here that the breaches have an extra obstinate or obstructive dimension and the purpose of Mr Mehrotra's breaches has been to obstruct and to delay enforcement. The non-compliance has now been continuing for a long time, and Mr Mehrotra has had many opportunities for complying and has not taken them. For those reasons, I am satisfied to the criminal standard that Mr Mehrotra is in contempt.”

31. He then went on to consider the question of sanction thus :

"42. ... in this case there is a significant element of culpability in that the breaches have been, as Deputy Master Kay QC said, in some cases flagrant and have been prolonged. As I have said, I am satisfied that they have been deliberate and that there has been neither a proper explanation nor a proper excuse. Both breaches are causing prejudice to PTPY in obstructing efforts to enforce the judgment debt. I am, therefore, satisfied that this case crosses the custody threshold and that a suspended order of committal is appropriate in this case not least in order to ensure that Mr Mehrotra and others are left in no doubt that the court and the court's orders will not be trifled with.

43. This is not, however, in my view, a case at the top of the range of cases of contempt or which might arise under CPR 71.8. Mr Mehrotra has attended. He has produced certain, albeit limited, information.

44. I have been referred to a number of cases where consideration has been given and sentences passed in relation to contempt including IFACO Feed Company SA v Societe De Distribution Nouvelle D'afrique (SODINAF) SARL & Anor [2019] EWHC 3715 (Comm) and a recent case of Farrer & Co. LLP v Meyer [2022] EWHC 362 (QB).

45. I have considered the various mitigating factors which have been mentioned before me today. I take into account Mr Mehrotra's health, and in particular that he is a registered heart patient. I take into account the extra arduousness of any prison sentence should it come to that because of Covid, and I take into account importantly that Mr Mehrotra is a man of previous good character.

46. In my judgment, the appropriate sentence is one of twelve months. Recognising that it will not bind a future judge, I indicate that nine months can be considered as coercive, and three months as punitive. The order will be suspended on terms which will be set out in detail, and which will involve the provision of documents and a witness statement and attendance."

32. That judgment was given on 25 February 2022. The conditions by which Mr Mehrotra's committal were suspended were as follows:
- a. by 4:30 p.m. on Friday 18 March 2022 he provides all documents in his control which are located in, or accessible from, the United Kingdom that relate to (i) his means of paying the Judgment Debt or (ii) any other information needed to enforce the Judgment Order.
 - b. by 4:30 p.m. on Friday 25 March 2022 he provides:
 - i. All documents in his control that relate to (i) his means of paying the Judgment Debt or (ii) any other information needed to enforce the Judgment Order, including (without limitation) the documents listed in Schedule A.
 - ii. A witness statement in his name, verified by a statement of truth, which must, to the best of his knowledge and belief, set out:
 1. in detail, supported by relevant documents, the steps which he has taken (and, if necessary, will take) to produce all the documents in his control that relate to his means of paying the Judgment Debt and any other information needed to enforce the Judgment Order.
 2. Confirmation that all such documents have been produced (or if they have not been, an explanation of why they have not been, supported by relevant documents).
 3. the name of the subsidiary of O1 International B.V. that was involved in the transaction with Exmoor International FZE which the Defendant alleged during the course of his cross-examination on 7 October 2021 would provide the funds necessary for Exmoor International FZE to discharge the Judgement Debt on his behalf, and its role in the transaction.

4. the name and address of all entities whose offices he allegedly attended in Grangemouth on 28 July 2021.

33. On 10 March 2022 Mr Mehrotra was personally served with Butcher J's order by a professional process server, a Mr Situl-Bader. I have seen an affidavit from Mr Situl-Bader. It is at page 42 of the bundle before me. He explains that Mr Mehrotra took time to listen, he was polite, and he accepted the personal service without any difficulty and a copy of the order together with a copy of the email. It is not in issue that Mr Mehrotra was personally served with that order.
34. On 18 March, in purported compliance with the condition imposed in Butcher J's order, Mr Mehrotra sent a number of documents to PTPY's solicitors. A summary of those documents is set out at paragraph 9 of Mr Ho's skeleton argument:
- a. A PDF entitled "ACS Documents", which is two pages long . The first page is an undated document entitled "My Company Status" which records some basic details about a company called "Astute Consultancy Services FZE", including that its licence expired on 7 March 2021. The second page is an undated document which provides further details about the licence granted to Astute Consultancy Services FZE Limited, which again shows that its licence expired on 7 March 2021. No other documents concerning this company were provided, in particular documents showing the assets it either holds or has held, or information concerning it relevant to the enforcement of the Judgment Order or the payment of the Judgment Debt.
 - b. A PDF entitled "Exmoor Documents", which is two pages long. The first page is an undated document entitled "Company Detail" which provides some basic information about Exmoor, such as its licence number and contact details. The second page is an undated "General Trade License" for Exmoor which also provides some basic information concerning Exmoor. No other documents concerning Exmoor were produced, in particular documents showing the assets it either holds or has held, or information concerning it relevant to the enforcement of the Judgment Order or the payment of the Judgment Debt.

- c. A PDF entitled “Mauritius Documents”, which is also just two pages long. The first page is from the Mauritian Corporate and Business Registration Department, is entitled “Information about RKMehrotra Holdings Ltd”, and appears to be dated “18/03/2022 9:17am”. It contains some basic details about the company, and its current officers (which do not include Mr Mehrotra). The second page is also from the Mauritian Corporate and Business Registration Department, is entitled “Information about RKM Family Affairs Ltd” and appears to be dated “18/03/2022 9:15am”. It also contains some basic details about the company, and its current officers (which do not include Mr Mehrotra).
 - d. Finally, a PDF entitled “Madonna Documents”, which is four pages long. The first page is a copy of a power of attorney signed by Mr. Pierre Pesce and notarised on 2 February 2021. The second page is a picture of the “Madonna Con Il Bambino” painting, and the third and fourth pages are Appendix 2 and 3 of the Power of Attorney consisting of copies of Mr Mehrotra’s and Mr Pesce’s passports. These documents all concern a transaction which Mr Mehrotra was apparently involved in to raise financing on the “Madonna Con Il Bambino” painting, and which Mr Mehrotra was ordered to provide “any and all documents” in relation to: see e.g. para 4.19 of Schedule A of Deputy Master Kay QC’s 8 October 2021 Order; para 4 Schedule A of Butcher J.’s Order.
35. On 21 March 2022 PTPY wrote to Mr Mehrotra identifying that those documents were failure to comply with the condition imposed in paragraph 2(1) of Butcher J's order and demanding that he do so immediately. That letter set out clearly the respects in which it was said that there was a failure of compliance. Paragraph 4 of the letter set out what had been sent in very much similar terms to the ones which now appear in Mr Ho's skeleton argument. Paragraph 5 of the letter said:

“The ten pages of documents you have sent are manifestly not all the documents in your control located in or accessible from the UK, which you were required to produce by paragraph 2(1) of the order. Simply by way of example and without limitation, you have obviously failed to produce emails, text messages and any other forms of communication which exist concerning your administration and operation of Exmoor

which you referred to under oath at the second information hearing before Deputy Master Kay QC; to the WhatsApp messages, which you admitted at the hearing on 25 February 2022 before Mr Justice Butcher were in your control and which you apologised for failing to produce ...”

36. And then it went on to list various other documents at paragraphs 5(3) and 5(4) of that letter. That was a detailed and clear set of examples of the respects in which it was considered that there had been a failure to comply. That was sent, as I have said, on 21 March 2022. There was no response to that letter prior to last night. On 25 March 2022 Mr Mehrotra provided three further pages of documents. They are said to be proof that Exmoor's bank accounts are closed. I agree with the submission that it is actually rather difficult to see what they do show, and one of them is a document which had in fact already been produced.
37. On 29 March, because there had been various letters sent to the court by PTPY as to the appropriateness of the hearing which was then scheduled in front of the master as to whether that should remain in front of the master, Master Brown ordered that the hearing which had been listed before him for Mr Mehrotra to be cross-examined about his assets was to be "relisted before a High Court judge on 1 April 2022 with a time estimate of 90 minutes to consider whether Butcher J's order should be discharged or should be enforced immediately". That is this hearing.
38. A skeleton argument was served on behalf of PTPY in accordance with the Commercial Court guide by noon yesterday. Nothing was heard from Mr Mehrotra until 9.51 this morning, when Mr Mansouri contacted my clerk attaching a skeleton argument and ancillary documents filed this morning on 1 April. That is a short skeleton argument helpfully prepared by Mr Kapoor, who has come into this case very late last night, and an affidavit from Mr Mehrotra enclosing as an exhibit a single document in relation to attempts to get an escrow agreement. The witness statement is a relatively long witness statement in the sense that it is eleven pages, but it contains very little which moves matters forward. There is some further attempt to answer one of the questions, but in essence the witness statement contains further promises that there will be compliance with the orders if more time is afforded to Mr Mehrotra. What it does not do, as Mr Kapoor has very properly accepted on behalf of Mr

Mehrotra, is remotely comply with the orders which had been made against Mr Mehrotra.

39. So, turning on to the question of what should happen, it is accepted before me that the law is as set out in paragraphs 13 and 14 of Mr Ho's skeleton argument:
- a. Butcher J.'s Order was made under CPR r.71.8(2).
 - b. Orders made under CPR r.71.8(2) are required by CPR r.71.8(3)(a) to be suspended committal orders.
 - c. If the conditions on which such committal orders are suspended are not complied with then CPR r.71.8(3)(b) provides, "*if the person fails to comply with any term on which the order is suspended, they shall be brought before a judge to consider whether the order should be discharged.*".
 - d. Paragraph 8 of CPR PD 71 is headed "*Breach of terms on which order is suspended – rule 71.8(3)(b)*" and provides specific guidance on hearings under CPR r.71.8(3)(b). Para. 8.5 of CPR PD 71 says:

"8.5 At the hearing the judge will discharge the order imposing punishment unless satisfied beyond reasonable doubt that—

- (1) the judgment debtor has failed to comply with—
 - (a) the original order to attend court; and
 - (b) the terms on which the order imposing punishment was suspended; and
- (2) both orders have been duly served on the judgment debtor."

40. It is also accepted that:

- a. Mr Mehrotra has failed to comply with the Second Information Order;
- b. Mr Mehrotra has failed to comply with the terms on which the punishment in Butcher J's order was suspended;
- c. the Second Information Order was duly served on Mr Mehrotra;

d. Butcher J's order was duly served on Mr Mehrotra.

41. That being the case, in effect the argument before me has centred on the question of what I should do, as in: not whether I should discharge the order, because both sides accept that that is not appropriate in the circumstances, but whether I should activate the order which was previously suspended or grant a further period of suspension. Mr Mehrotra seeks a month in which to comply.
42. I should however just record for the purposes of this judgment formal findings that **I am satisfied so that I am sure in addition to the agreement of the parties that Mr Mehrotra has failed to comply with the Second Information Order.**
43. That is a finding which Butcher J has already made at paragraph 36 of his judgment. On the basis of the documents I have seen, I myself am satisfied so that I am sure that Mr Mehrotra breached the Second Information Order. I am also satisfied so that I am sure that Mr Mehrotra has completely failed to comply with the conditions which were imposed, which were that he produce a witness statement containing a number of important pieces of information, including the answer to one of the two questions which he had failed to answer at Deputy Master Kay's hearing, the confirmation that he produced all the relevant documents in his control that relate to his means of paying the judgment debt, and details of the steps he had taken, supported by relevant documents, to produce those documents.
44. Mr Mehrotra did not comply with the terms on which the punishment in Butcher J's order was suspended. It might be said that he has now belatedly complied in giving an answer to one of the two questions which were asked. **He has not however complied with the other requirements, and I am satisfied so that I am sure of this.**
45. This is a particularly clear case, and it is effectively conceded. While Mr Mehrotra now appears via Mr Kapoor and offers an apology for his non-compliance, there is effectively no explanation for that non-compliance. Mr Mehrotra has failed to confirm that he has produced all relevant documents in his control.

46. A particularly notable feature to which I shall revert is the question of the WhatsApp messages. Mr Mehrotra has admitted in front of Butcher J (and I have seen the passage of evidence) that he had WhatsApp messages concerning the running of Exmoor that he had not produced. That was recorded in Butcher J's judgment at paragraph 36. Those have still not been produced, and a belated attempt to explain the non-production is now made, to which, as I say, I shall revert.

47. Mr Mehrotra has also not produced other documents which he previously admitted to having, for example emails in relation to Exmoor, which he previously claimed were located in the UAE. He also admitted that he had documents concerning loans made to him by one of his companies in Dubai. That can be seen at page 67 of the transcript of the hearing, when Butcher J asks him:

"MR JUSTICE BUTCHER: How did you then fly to Dubai?

THE DEFENDANT: The company that used the fund sponsored my trip there, sir.

MR JUSTICE BUTCHER: Right, so the documents relating to those loans presumably exist.

THE DEFENDANT: Yes, they do, sir.

MR JUSTICE BUTCHER: Why have you not produced these?"

48. These documents still remain unproduced.

49. Then there are the categories of documents in schedule A to Butcher J's order. Those are ones in respect of which Mr Mehrotra had promised on 15 October 2021 that he would provide documents, and those still remain unproduced. So, there are no documents about Exmoor's transaction in Grangemouth, which he claimed prevented him from attending the hearing. He has not produced documents concerning his attempts to obtain documents from the Mauritian authorities about his resignation from the directorships of RKMehrotra Holdings.

50. Again, at page 104 of the bundle, one sees this passage of evidence where Mr Mehrotra says, "I had requested permission from Mauritius and will be providing", and then further on Butcher J says:

“MR JUSTICE BUTCHER: Well, is there any reason you should not provide that material, this refusal?

THE DEFENDANT: It's a refusal from the Mauritian authorities. It's not ...

MR JUSTICE BUTCHER: Well, presumably you have got that in writing, Mr Mehrotra.

THE DEFENDANT: Yes, I do, sir. I can provide.

MR JUSTICE BUTCHER: Well, then, why have they not got that?

THE DEFENDANT: I will provide that”.

51. Again, not provided. Also not provided are any documents showing how Exmoor used the six million which PTPY paid to it. That is, as Mr Ho points out in his skeleton, fundamentally what these proceedings concern, and there simply must be documents in his control which show how that money was spent or used.
52. It is also apparent from the documents which have been produced that there must be more documents. There is an issue now as to whether what were previously said to be text messages and now appear to be said to be WhatsApp messages coming from one of Exmoor's banks confirm that that account is closed. Even if it is the case that that what is produced is a valid screenshot (and there are always issues over screenshots of text messages or WhatsApp messages), the screenshot, whether it be of text messages or WhatsApp, itself shows that there must have been more messages from the bank.
53. That is now said to be text messages, and an explanation is given that there are no more WhatsApp messages because all the WhatsApp messages were effectively set to automatically delete. But that does not explain the continued existence of these two particular messages, which logically ought to have something in between them and certainly there ought to be further text messages.
54. I turn again to the requirements, just to record that **I am satisfied so that I am sure that the second information order was served on Mr Mehrotra.** It is not in issue. I have seen the statement from Mr Situl-Bader. Also **I am satisfied so that I am sure that Butcher J's order was duly served on Mr Mehrotra.**
55. That then leads us to the question as to what order I should make consequential on the decision not to discharge Butcher J's order. The relevant law is set out in paragraph 8 of PD 71 and CPR 81.9(2) to (3). Paragraph 8 of PD 71 provides:

"8.1 If—

- (1) the judgment debtor fails to attend court at the time and place specified in a suspended order punishing them for non-compliance; and
- (2) it appears to the judge or court officer that the judgment debtor has been duly served with the order,

the judge or court officer will certify in writing the debtor's failure to attend.

8.2 If the judgment debtor fails to comply with any other term on which the order was suspended, the judge or court officer will certify in writing the non-compliance and set out details of it...

8.6 If the judge decides that the order imposing punishment should not be discharged, it will be enforceable immediately. Rules 81.9 and 81.10 make provision for enforcement of orders punishing a person for contempt of court."

CPR r.81.9(2)-(3) says:

"(2) Execution of an order of committal requires issue of a warrant of committal. An order of committal and a warrant of committal have immediate effect unless and to the extent that the court decides to suspend execution of the order or warrant.

(3) An order or warrant of committal must be personally served on the defendant unless the court directs otherwise."

56. So, the issue which is before me is whether I should, as I am urged to do by PTPY, make the order of Butcher J enforceable immediately. That order is one which would commit Mr Mehrotra to prison for twelve months. The period, as Mr Kapoor has pointed out, was indicated by Butcher J to be on the basis that nine months could be considered coercive and three months as punitive. There is an issue then as to what should be done about that.
57. Mr Kapoor has tried to persuade me that given that Mr Mehrotra has now produced a further witness statement, he has produced some documents since the previous hearing and he has produced one more document overnight, and he says that he will comply further in the future, I should give Mr Mehrotra one last chance. Mr Ho on behalf of

PTPY has said that there is no good reason to do that and that I should not suspend the order in circumstances where there is really no reason to think that it will make any difference.

58. Having reflected carefully on the submissions which have been made - and one never takes lightly the decision to send a contemnor to prison - I accept the submissions which Mr Ho has made. This is, as the history of the case set out in the factual background which I have already outlined makes very clear, a case which has a long history of failures to comply with court orders by Mr Mehrotra. Mr Mehrotra has at no point said that he does not understand the orders. What is more, I have read passages of the transcript where it has been made very clear to him, for example by Butcher J, as to the consequences which would apply if he did not comply with the orders. He has had served on him repeatedly committal documents which make clear the seriousness of the situation.
59. I am absolutely satisfied that Mr Mehrotra has had it perfectly well explained to him that the situation is serious and that the sanction is imprisonment. I am also perfectly well satisfied that Mr Mehrotra is capable of understanding those facts and has understood those facts. Indeed, the door-of-the-court instruction of lawyers and the door-of-the-court production of a witness statement, which must have taken some time to produce, is symptomatic of his understanding.
60. The question really is whether the instruction of lawyers and the assurances now given are ones in which I can place any faith. I do not consider that they are.
61. As Mr Ho has pointed out, this is a case where there have been lawyers involved in the past and that has not helped. This is a case where, even faced with Butcher J explaining in blisteringly clear terms what is going to happen, it has not helped. So, I do not consider that the instruction of the lawyers at this stage is going to help. Also, the explanations which are sought to be given within the witness statement show more of a pattern of partial and evasive answering of questions put to him, which one can see in the previous transcripts.

62. So, for example, the position in relation to the WhatsApp communications: previously it was said there were WhatsApp documents; now it is said, no, there are no WhatsApp documents apart from this one document, "because my WhatsApps were set to automatically delete". If that was the truth, that would have been something which would and should have been said to Butcher J at an earlier stage. It was not, and so it has on its face, even looking at it in those terms, every sign of being a disingenuous answer. What is more, the document which is said now to be produced which is said to be the one example of a WhatsApp document, seems unlikely itself to be a WhatsApp document.
63. There is no proper explanation of how a month is needed in the degree of particularity which would be requisite to convey any degree of conviction against the background of this case. There is no production of the documents which could have been produced in the time between the last hearing and this hearing; and given the fact that previously assurances have been given that documents will be disclosed and payment will be made, there can be no faith given into any such assurances. This is effectively a situation where Mr Mehrotra has cried wolf too often. So far as payment is concerned, it has previously been said that payment will be made, but if payment is about to be made, there must be some documentation in Mr Mehrotra's possession in existence which he could produce to verify that. That has signally failed to be done.
64. So, in all the circumstances, I come to the conclusion that I would very much err if I were to accede to the submissions which Mr Kapoor makes. It is a situation in which it will be open to Mr Mehrotra to purge his contempt and then come back to the court in relation to such portion of the suspended sentence as is coercive rather than punitive.
65. So far as that is concerned, I have looked at what Butcher J has to say as regards the division between coercive and punitive. It seems to me that in circumstances where we are some time further on and there has still been a failure and I am recording my dissatisfaction with the way in which Mr Mehrotra has responded to the order of Butcher J, it would be appropriate for the sentence which Butcher J declared of twelve months to be now divided so that three and a half months are regarded as punitive and eight and a half months are coercive, so Mr Mehrotra will have to serve three and a half months in any event, and the question of the amount of the eight and a half months

which is coercive will be open to him to apply to vary if he eventually complies with the orders which have been made.

66. So, I am going to issue a warrant of committal. I am not going to suspend that warrant.

67. I must by the rules of the court record a number of things.

- a. I am making the warrant of committal for a period of twelve months against Mr Saurabh Mehrotra.
- b. The nature of the contempt of court in respect of which the committal order is made is effectively in two parts. The first is that the suspended committal order was made for a failure to comply with the Second Information Order as set out in the order of Butcher J. That was:
 - i. a failure to comply with the Second Information Order by failing (in breach of paragraphs 1 and 2 of that order) to produce all relevant documents providing information about his means or any other information needed to enforce the judgment order;
 - ii. failing in breach of paragraphs 1 and 3 of the Second Information Order during the second information hearing to answer the two questions identified at paragraph 47 of Davies 1 which the court permitted the claimant to ask.
- c. The second part of the contempt, the nature of the failure which results in that order not being discharged but rather activated, is that Mr Mehrotra has failed to comply with the terms on which that order was suspended. In particular, there has been:
 - i. a failure to produce in accordance with the terms of that order the witness statement that he was ordered to provide,
 - ii. the failure to provide the information which that statement was supposed to contain and

iii. the failure to produce all the documents in his control, whether located in the UK or abroad, that he was ordered to disclose.

d. For that contempt of court, the punishment being imposed is twelve months' imprisonment divided into a period of three and a half months punitive and eight and a half months coercive.

68. I will provide the details which I have just given to the national media and to the judicial office in accordance with the rules.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge