



Neutral Citation Number: [2019] EWHC 3436 (Comm)

Claim No: CL-2019-000139

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

Date: 16 December 2019

Before:

MR JUSTICE WAKSMAN

**INDUSTRIAL AND COMMERCIAL BANK OF
CHINA LIMITED, MUMBAI BRANCH**

Claimant

- and -

ANIL DHIRAJLAL AMBANI

Defendant

Bankim Thanki QC, Laura Newton and Rebecca Loveridge (instructed by White & Case LLP,
Solicitors) for the Claimant

Robert Howe QC, Harish Salve S.A. and Peter Head (instructed by Mishcon de Reya LLP
Solicitors) for the Defendant

JUDGMENT

Hearing date: 7 November 2019

INTRODUCTION

1. The Claimant in this case is the Mumbai Branch of Industrial and Commercial Bank of China Limited (“the Bank”) which is a Chinese multinational banking company. The Defendant, Mr Anil Ambani (“Mr Ambani”), is an Indian citizen and Chairman and founder of the Reliance Group, one of India's largest private conglomerates. The group includes Reliance Communications Limited (“RCom”). Mr Ambani, together with family members and trusts, holds at least 67.86% of the shares in RCom. According to him, in 2012 the Reliance Group had 100,000 employees, total revenues of US\$10 billion, operating profits of over US\$2 billion and total assets of over US\$10 billion. It was a leading presence over various sectors including telecommunications, energy and financial services.
2. The Bank’s claim arises out of the default by RCom on a written facility agreement entered into with the Bank, acting for itself and other lenders, on 22 February 2012 (“the Facility”) by which RCom borrowed a principal sum of US\$925,299,999 (“the Loan”). The purpose of the Loan was to enable RCom to meet its obligations under certain foreign currency convertible bonds due to mature on 1 March 2012. In addition, on 22 February 2012, a guarantee of RCom’s liabilities under the Loan was executed by a Mr Hasit Shukla, Commercial and Treasury Head at RCom, in favour of the Bank and purportedly on behalf of Mr Ambani pursuant to a Power of Attorney (“POA”) signed by both Mr Ambani and Mr Shukla.
3. The parties do not dispute the terms of the Guarantee or the Facility, nor do they dispute that RCom has defaulted on its payments under the Facility.
4. Between February and November 2017, the Bank made various demands for payment from Mr Ambani to which he did not respond. By a notice dated 21 June 2018, the Bank accelerated the sums due under the Loan by reason of RCom’s existing defaults, as it is common ground it was entitled to do. At the same time, it made a further demand upon Mr Ambani to which, again, he did not respond.
5. On 1 February 2019, a letter before action was sent by White & Case on behalf of the Bank for whom it had also acted on the underlying transactions in 2012. Proceedings were then issued on 5 March. The core points made in Mr Ambani’s Defence, served on 18 April, were that he had no knowledge of any guarantee to be signed on his behalf by anyone and remained in ignorance of it until he received the letters from the Bank in 2017. He admits that he signed a written POA but says that, contrary to its express terms, it did not have the intended guarantee, or any document, annexed to it. He rejects that he is bound by the Guarantee either as a matter of actual or apparent authority.
6. On 24 May 2019 the Bank issued an application for summary judgment on the Guarantee, alternatively for a conditional order requiring Mr Ambani to pay into Court all or some of the sum claimed on the basis that on any view his defence is improbable.
7. This is my determination of these applications.

SUMMARY JUDGMENT - THE LAW

8. The principles relating to summary judgment are well known and there is no need for an extensive citation of authority. Part 24 of the CPR states that for a claimant to obtain summary judgment, that claimant must show that there is no real prospect of a successful defence and no other compelling reason for a trial.
9. The court must consider whether the defendant has a "*realistic*" as opposed to a "*fanciful*" prospect of success: *Swain v Hillman* [2001] 1 All ER 91. A "*realistic*" defence is one that carries some degree of conviction (i.e. it is more than arguable) and "*fanciful*" connotes being devoid of substance or hopeless: *ED&F Man Liquid Products v Patel* [2003] EWCA Civ 472. The criterion under CPR 24 is not one of probability but rather, "*absence of reality*": *Three Rivers District Council v Bank of England* (No 3) [2003] 2 AC 1.
10. In circumstances where witness evidence on disputed issues of fact is provided in opposition to an application for summary judgment, the court cannot grant it unless it is satisfied that those witnesses are "*bound to be disbelieved*" or that their evidence is "*so obviously untrue that it is fanciful to suggest that it might be accepted*": *Director of the Assets Recovery Agency v Woodstock* [2006] EWCA Civ 741. Put another way, a judge must not conduct a 'mini-trial' where the court inappropriately tries to resolve factual and other issues as if the hearing were itself the trial. A factual allegation can only be dismissed by the court if it is clearly hopeless on the basis of the evidence before the court.
11. By paragraph 5.2 of PD 24, on an application for summary judgment the court may, instead of granting judgment, make a conditional order. This is one which requires a party to pay a sum of money into court, among other things. Paragraph 4 explains that such an order may be made where "it appears to the court possible that a claim or defence may succeed but improbable that it will do so". Mr Howe QC, for Mr Ambani, correctly submits in paragraph 91 of his skeleton argument that such an order is "reserved for defences which escape summary judgment, but only just. The Court is in effect recording that it has grave doubts that the defence will succeed at trial and that although it has just about overcome the summary judgment threshold, the condition of being allowed to go to trial is the payment of a sum into court". The Court is therefore very nearly prepared to give judgment.
12. It is common ground that if I was minded to make a conditional order then I should give Mr Ambani an opportunity at that stage to put in evidence as to his financial position and in particular his ability or otherwise to make a payment into court of all or part of the amounts claimed.

THE EVIDENCE

13. For the Bank, there are two witness statements of Charles Balmain, a solicitor with White & Case in London, dated 24 May and 6 September respectively. For Mr Ambani, there is his own witness statement dated 23 July and then a witness statement of Michael Armstrong, of Mr Ambani's solicitors here, Mishcon de Reya LLP, dated 10 October.
14. Mr Howe QC submitted that overall, less weight should attach to the Bank's evidence as it came from its solicitor, in contrast to Mr Ambani's which was contained in his own witness statement, deriving from his personal knowledge of the facts of this case. I am not persuaded by this argument in circumstances where it is possible to understand the Bank's

case by reference to contemporaneous documents and e-mails exchanged between the parties in 2011-2012 as recounted in Mr Charles Balmain's witness statements and exhibited thereto. On the other hand, and as explained in detail below, there are surprising gaps in Mr Ambani's witness statement as well as a lack of evidence from senior executives at RCom.

THE FACTS

Introduction

15. This is a case where, apart from the transactional documents themselves, a great deal of how the transactions progressed, including the Guarantee and the POA can be gleaned from the contemporaneous emails. First, however, I explain who the main players in this chronology were. I deal with the POA, in context in this chronology.

The key players

16. As to the main players, apart from Mr Ambani himself, on behalf of RCom, they included:

- (1) Mr Vishwas Joshi, President Finance employed by Reliance Capital Limited, and responsible for overseeing the corporate finance teams at RCom and the other companies in the Reliance Group;
- (2) Mr Anand Subramaniam, Vice-President responsible for Corporate Finance at RCom;
- (3) Mr Sandeep Kudtarkar, member of the Corporate Finance Team;
- (4) Mr Hasit Shukla;
- (5) Mr Punit Garg, President & CEO, RCom;
- (6) Mr Anil Nahata, another member of the RCom Corporate Finance Team;
- (7) Mr Atul Dalakoti, China country head for Reliance;
- (8) Mr Shri Prakash Shenoy, RCom Company Secretary;
- (9) Bharucha & Partners, RCom's Indian legal advisors.

17. As for the Bank, its own representatives included:

- (1) Mr Jiang Tao, Chairman and General Manager;
- (2) Ms Zhumei Wang, Client Manager;

18. There was also Wayne Wang, Client Manager, at CDB, another lender.

19. Representatives of White & Case, the lenders' lawyers, included:

- (1) Ms Xin Wang, Counsel, Beijing
- (2) Cecile Yang, Paralegal, Hong Kong;

- (3) Xingjia Yao, Associate, Beijing;
 - (4) John Shum, Partner, Singapore;
 - (5) Ms Simran Sandhu, Associate, Singapore and Beijing.
20. In addition, the Bank had lawyers in India at a firm called JSA Law. One of them was Mr Majumdar.

Chronology of contemporaneous communications (1) excluding the POA

21. Negotiations in respect of the Facility started in November 2011 between RCom and the Bank. On 16 November Mr Ambani met Mr Jiang, in Beijing. At this meeting there was a high level discussion about the proposed facility. On 19 November 2011 Mr Joshi sent Mr Ambani an 'Update on Refinancing Plan for US\$1 billion FCCB due in February 2012'. The section on security in this document did not refer to a personal guarantee. Indeed, to judge from the later chronology of events, it seems clear that a personal guarantee was not required by way of security at this stage.
22. On 21 November 2011, Mr Ambani e-mailed Mr Jiang thanking him for his time at their recent meeting. He made reference not only to the intended syndicated loan for US\$1.2 billion but also an export facility for Huawei and ZTE. Because of the short timeframe, Mr Ambani was aiming for completion of the Facility and drawdown by no later than 15 December. On 23 November 2011, Mr Ambani received a letter sent on behalf of Mr Jiang stating that more security was required to cover the loan risk.
23. By a further letter to Mr Tao, dated 24 November, Mr Joshi said, among other things, that "our Chairman" had agreed to provide a Comfort Letter personally to be signed by him and that a draft had been delivered to the Bank that day.
24. On 24 November, Ms Wang emailed Ms Yao and Ms Sandhu stating that the Bank were communicating with RCom over further security and sought suggestions about a share pledge or other security. By that time, the Bank had received the "comfortable" letter from Mr Ambani on which Ms Wang asked for White & Case's comments stating that the Bank wanted "substance protection". That letter states that Mr Ambani would procure that the Reliance ADA Group maintained ownership of at least 26% of RCom, and that no other person should acquire more than 50% of its share capital or otherwise control it, that all payments made in respect of the Facility would rank at least *pari passu* with other payments of RCom's indebtedness and that RCom would inform the Bank of any event which in its reasonable assessment would have a material adverse impact on its operations and financial results. Importantly, the letter ends thus:

"This letter is provided for the comfort of Lenders only, and is not intended to create any legally binding obligations between Lenders and Anil Dhirubani Ambani."
25. It is not suggested that Mr Ambani was unaware of this particular letter.
26. Later on 24 November, Ms Sandhu sent over a redraft, making the point that she was not sure how close RCom wanted this comfort letter to be to a guarantee or require cash contribution, but she had broadened the language. The redraft did not amount to a personal guarantee in conventional form but it did somewhat tighten up the undertakings offered in

the original; importantly it added at the end that the letter was a condition precedent under the Facility which would be relied upon by each lender, that the lenders and RCom would keep the contents confidential and that it was intended to be legally binding, governed by English law and with English courts having exclusive jurisdiction.

27. On 25 November, Ms Sidhu sent a further redraft of the comfort letter, along with a redrafted Term Sheet in relation to the proposed Facility which, in the Security section referred to the provision of a comfort letter in favour of the lenders in a form and substance satisfactory to them. There were a number of other securities also provided which appear to have been agreed by that stage. Ms Wang responded and asked, among other things, whether the comfort letter could appropriately be renamed “support letter”. I suspect this is because by that stage, the document redrafted by White & Case was considerably more than a non-binding comfort letter.
28. On 8 December, Ms Wang now wanted an additional undertaking in the support letter (as she now called it) to purchase a considerable amount of equipment and services from Huawei and ZTE. She also asked whether it was possible to change the support letter to be “more like a guarantee”, so that, for example, Mr Ambani would be undertaking on his own assets to ensure that RCom would perform its obligations under the Facility. Later the same day, Ms Sandhu replied with a redraft of the comfort letter (as she continued to refer to it) but saying that if the Bank wanted a guarantee, then, subject to the views of Indian Counsel, a formal guarantee should be included in the finance documentation. In that sense the “beefed-up” support letter was now being overtaken by the provision of a guarantee and once that was raised there were no further attempts to amend the draft support letter.
29. In an email of 9 December, Ms Wang asked Ms Sandhu to provide a formal guarantee “as our credit approval department requires a guarantee instead of a comfort letter” so that they could deliver a draft of the guarantee to RCom in negotiations the following week. There then appears to have been a conversation between Ms Yao and Ms Wang because she emailed Mr Shum to say that having spoken with Ms Wang, the Bank was considering pushing for a guarantee or a share Pledge, and they needed a draft guarantee for internal review now. It seems that as at that stage, RCom had not agreed to provide a guarantee.
30. The meeting on 14 December with RCom focused primarily on the security structure with the Bank pushing for a personal guarantee and RCom counter-offering with a share pledge in an overseas subsidiary. This is set out in Ms Wang’s email to Mr Shum of 14 December in which she stated that they would be reconvening the following day.
31. On 14 December 2011 Mr Ambani sent e-mails to Mr Chen of CDB and Mr Jiang. It is obvious from their content that they were being sent in the light of the discussions which took place on 14 December. I say that because the letter states that the security package was still under discussion and refers to the bank having put in a request for additional security to ensure a smooth approval process and that “we” have provided for additional security in terms of a share Pledge of 26% of Reliance Infratel shares. This obviously reflects the communication from Ms Wang to Mr Shum referred to above. Mr Ambani also stated that:

"As you are aware, apart from this my personal comfort letter in the earlier format as already provided to CDB would also be extended for this facility."

32. In the meantime, Ms Wang sent to Mr Joshi and Mr Subramaniam, among others, a copy of a corporate guarantee which could be adapted into a personal guarantee and early on the morning of 15 December Ms Wang sent out a term sheet with footnotes identifying outstanding issues; these included the question of the guarantee. By an email later on 15 December but, it would appear, before the meeting, Mr Kudtarkar sent to Ms Wang and other parties, a further version of the term sheet which is important because the footnote concerning security was removed and the reference to the provision of a personal guarantee, albeit still in square brackets from the previous version, was retained. The square brackets were then removed in a further version of the term sheet which obviously emerged after the meeting; it was circulated by Ms Wang in an email which said that it reflected “today’s discussions”.
33. By that stage, JSA Law had been asked to give an opinion to the Bank as to the enforceability of a personal guarantee given by an Indian national but which is governed by English law with the English court having jurisdiction. JSA Law advised that this was possible.
34. On 19 December, Ms Wang sent a revised draft of the term sheet to Mr Joshi and Mr Subramaniam. Among other things, the requirement for a personal guarantee from Mr Ambani remained. Then, on 23 December 2011 Ms Wang sent an e-mail to Mr Joshi, Mr Subramaniam and Mr Kudtarkar attaching a "preliminary draft of the personal guarantee".
35. By a letter on headed notepaper dated 5 January 2012 Mr Joshi made a formal application on behalf of RCom for the proposed Facility which stated in the section on Security that there would be among other things, a personal guarantee provided by Mr Ambani.
36. Pausing there, it is completely clear from the communications between the parties up to that point that (a) as far as the management of RCom was concerned putting to one side for the moment, Mr Ambani himself, it had now been firmly agreed that he would provide a personal guarantee (b) from the Bank’s perspective, a personal guarantee would be provided as part of the security.
37. On 16 January 2012, RCom and the Bank and other lenders signed a term sheet (“the Term Sheet”) which stated explicitly under the sub-title of 'Security' that "Mr Ambani will provide an English-law governed personal guarantee in favour of the Lenders, in form and substance satisfactory to the Lenders (the "Guarantee")". Mr Joshi signed on behalf of RCom.
38. On 1 February 2012 Mr Subramaniam circulated comments on the draft guarantee to Ms Wang. However, later the same day, Ms Wang had a telephone call with one of RCom’s representatives who informed her that it wanted to remove all references to “Guarantee” and related terminology from the Facility. They suggested that there be two Facility agreements, one with the relevant Guarantee language and one without. Ms Wang, in her email to Mr Shum recounting this, said that she rejected that but thought the Bank might be able to accommodate RCom’s concern by “coding” the language i.e. calling the Guarantee a “Side Letter” and referring to the Guarantor as something else. Mr Shum responded later by suggesting that the guarantor could be called a “Support Provider”. The upshot of this was an email from Ms Wang to various representatives of the Bank stating that following the advice from White & Case, references to “Guarantee” and “Guarantor”

should be coded to avoid breach of confidentiality and referred to instead as “support letter” and “support provider”. She stated that the terminology would not affect the substance of the agreement itself. It will be recalled that the language of “Support” is redolent of the earlier discussions concerning change of terminology of the comfort letter. References in the draft Facility to Guarantee and Guarantor were accordingly changed.

39. By an email dated 10 February Ms Yao sent to Ms Wang a draft comfort letter. This is very much in the form of the original comfort letter provided by RCom initially. It retained the language of not intending to be legally binding. All of that is perfectly understandable now that a personal guarantee was (apparently) being provided by Mr Ambani. This comfort letter was never expressed as a condition precedent for the Facility.
40. On 10 February 2012 there was a meeting of the RCom board which was chaired by Mr Ambani. It was part of the business of that meeting for the RCom Board to resolve to enter into the Facility. The Term Sheet was referred to and this is recorded in the minutes of that meeting. The minutes record that the board was informed about the basic terms of the loan and that those terms included a pledge on shares held by RCom but there is no specific reference to a guarantee in those minutes. The board resolved to enter into the Facility and the pledges. By an email of 13 February, Ms Wang sent to Mr Subramaniam and Mr Joshi the latest draft of the facility agreement and guarantee and also a draft of the comfort letter which was in the same terms as that referred to in paragraph 39 above.
41. It seems from an email from Mr Joshi to Ms Wang sent early on 14 February that the intention then was for there to be completion and a signing ceremony of all the documents on 20 February in Beijing. He said that Mr Ambani was likely to be there at that time so that it would be “nice” if the signing could indeed be on that day. However by an email from Mr Subramaniam to Ms Wang later the same day, he enclosed a Power of Attorney which was to be issued authorising a person to sign the guarantee on behalf of Mr Ambani. This draft made clear, as did the executed version, that the guarantee was to be annexed to it.
42. On 15 February 2012, Mr Subramaniam stated in an email to JSA that “they were not comfortable attaching the Guarantee to the PoA as an annexure”. Mr Majumdar of JSA replied by saying that the reason for having it annexed to the POA was to ensure that Mr Ambani was aware of the obligations that he was required to assume. Mr Subramaniam had also called Ms Wang (according to the latter’s email of 15 February) requesting that the guarantee be not attached. Ms Wang asked Mr Majumdar whether it would be sufficient for there to be an additional recital to the effect that Mr Ambani had been presented with an agreed form of the Support Letter and acknowledged that he had read and understood the obligations imposed on him and that he would be fully bound. Mr Majumdar replied that this would be fine. But Ms Wang then asked Mr Shum his opinion if the guarantee was signed by an authorised agent pursuant to a POA and the guarantee was not appended to it. Ms Wang had also emailed Mr Subramaniam on 15 February to ask him directly why the Support Letter could not be annexed to the POA. She said she would expect that Mr Ambani would want to see what he is authorising him to sign.
43. However, later on 15 February, Mr Subramaniam wrote to both Ms Wang and Mr Majumdar to say that they “have spoken internally and we are okay with the Annexure to the POA”.

44. It was necessary for the borrowing about to be undertaken by RCom to be authorised by the Reserve Bank of India (“RBI”). By a letter dated 15 February addressed to the RBI, a request for such authorisation was made and the letter made express reference to security including the provision of the guarantee.
45. By now, the signing ceremony was planned for 22 February in Hong Kong. Mr Ambani would not be there personally. On any view, that would be obvious from the fact that it was thought necessary to authorise an agent to sign on his behalf.
46. At this point, I shall set out the position in relation to the POA.

The POAs

47. The text of all the versions of the POA in respect of Mr Shukla is the same and reads as follows:

“POWER OF ATTORNEY

I, Anil Dhirajjal Ambani, son of Shri Dhirajjal K Ambani, resident of Sea Wind, 39, Cuffe Parade, Colaba, Mumbai-400005, India having passport number Z1973509 (hereinafter Support Provider), do hereby appoint Mr. Hasit Shukla, son of Shri Navinchandra Shukla resident of 403, Sabita Cooperative Housing Society Ltd., 16th Road, Bandra West, Mumbai - 400050 India, to be my true and lawful ATTORNEY (hereinafter "Attorney").

- A. Pursuant to certain financing documents including a US\$ 925,299,999 facility Agreement (the "Facility Agreement") to be entered into between Reliance Communications Limited (RCOM) and China Development Bank Corporation, Export-import Bank of China and Industrial and Commercial Bank of China (the "Financing Parties"), the Financing Parties have agreed to extend to RCOM and RCOM has agreed to avail from the Financing Parties a facility of a sum of up to USD 925,299,999 (the "Facility") on the terms and conditions contained in the Facility Agreement and the other financing documents.
- B. The Facility Agreement inter alia requires the Support Provider to execute the Support Letter (in the form as set out in the Annexure hereto) between the Agent and the Support Provider in order to effectively achieve the purposes of the Facility Agreement.

NOW, THEREFORE, in consideration of the aforesaid premises I hereby nominate, appoint and constitute the Attorney as the true and lawful attorney to do the following acts, deeds and things for and on behalf and in my name:

1. to execute, acknowledge, and deliver Support Letter in favour of and for the benefit of the Financing Parties in terms of the Facility Agreement and do all things necessary to carry out the intent hereof, as fully and effectually as I may do if present, provided, however that all transactions carried by my Attorney hereunder shall be transacted in my name and on my behalf and shall be binding on me, and that all endorsements and instruments (including the Support Letter) executed by my Attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my Attorney and shall be in my name and on my behalf and all such obligations expressed to be assumed thereunder shall be binding on me;
2. to do all such acts, deeds and cause to be registered in favour of the Agent, any such deeds, documents, and writings as may be deemed necessary;
3. to comply with all requisite formalities, including submission of Support Letter and requisite / necessary approvals from the competent / relevant authorities, if applicable, to the satisfaction of the Agent;
4. to appear before any other governmental authority, regulator, in relation to execution of Support Letter; and
5. to generally do or cause to be done every other acts, deeds, matter or thing that the Attorney may deem necessary or expedient for the purpose of or in relation to these presents.

This Power of Attorney may not be revoked unless by written notice to my Attorney and the Agent after the due execution, acknowledgement and delivery of the Support Letter and other related documents. Revocation of this Power of Attorney, will not in any manner prejudicially affect the validity or enforceability of the obligations expressed to me by the Attorney on my behalf prior to the revocation hereof

IN WITNESS WHEREOF, I have executed this Power of Attorney on this 17th day of February, 2012.

Signature of Support Provider

48. It is accepted by Mr Ambani that he signed this document on 17 February 2012. It is also common ground that the signature was attested to by an advocate, Ms V.N. Nadar, and stamped as is shown at pages 240-242 Volume A2 of the hearing bundle. According to Mr Ambani, the attestation by Ms Nadar occurred later that day and after he had signed the POA because he did not see her. Likewise, he says that Mr Shukla must have signed the POA later in the day because he did not see him either. Mr Ambani has stated in his witness statement that there was no copy of a guarantee (or any other document) attached to the POA when he signed it.
49. In addition, Mr Ambani signed a POA in exactly the same terms as the first one, and similarly attested and stamped, but where the relevant attorney was Mr Joshi. There is no evidence from Mr Ambani as to whether any document was attached to this POA. It is submitted on his behalf that this is because it was not appreciated that the Bank might make reference to this other POA. I follow that but I have to say that it seems somewhat odd that Mr Ambani should make no reference to it at all in his evidence, given the attention focused on the whole question of the POA and his particular case that it was Mr Joshi who told him what the POA was for (ie the comfort letter).
50. On 21 February, Ms Yao emailed Ms Wang, Mr Subramaniam and Mr Joshi, to say that she had received from JSA the attached two POAs both authorising an authorised signatory to execute, acknowledge and deliver the Support Letter. She asked Mr Subramaniam to confirm who would be signing the Support Letter tomorrow. The two POAs referred to are obviously those relating to Mr Joshi and Mr Shukla. There must have been two of them on the basis that it was not clear who might be signing on behalf of Mr Ambani at completion. However, according to the Bank, the POAs received by Ms Yao did have the draft guarantee annexed to them. The header page of the draft states at the top “White & Case Draft February 13, 2012” followed by “[*Subject to Indian Counsel and Syndicate review*]. The footer of the draft bears the version name “HONGKONG 296144v8(2K)”. Again, according to the Bank, the same copy of the POA was provided to Ms Yang of White & Case Hong Kong when Mr Shukla attended its offices there on 22 February to sign the guarantee.
51. There is a further copy of the POA which is in identical terms to the earlier copies, including the same attestation and stamps dated 10 February 2012 but it bears a further attestation and stamps from Ms Nadar dated 21 February 2012. The guarantee annexed to it again is the same as the others but this time it also bears the notary’s stamp. The copy of the draft guarantee before me here does not appear to have the footer referred to in paragraph 50 above. It is not clear whether the footer has been cut from the bottom of the pages because of the additional lines thereon (see pp 1763-1776 of Volume B13 of the hearing bundle) but in any event the header page bears the same White & Case reference and the terms of the draft are identical to the earlier ones.
52. Also on 21 February, Ms Wang emailed Mr Subramaniam asking him to ask the authorised signatory to bring with him/her a proof of identification and saying that the Guarantee would need to be signed in the presence of a male witness. The Bank’s case is that the POAs which it received did have the draft guarantee annexed to them.

Chronology of contemporaneous communications (2)

53. There was a separate development on 21 February. By her email to various people at the Bank, copied to Mr Shum under the subject “comfort letter”, Ms Wang said that she had just got off the phone with Mr Subramaniam and there might be an issue with the signing of the comfort letter the following day. The authorised signatory of RCom, Mr Shukla, would be presenting himself to sign the Finance Documents. The comfort letter was intended to be issued by Mr Ambani but the POA only authorised Mr Shukla to sign the guarantee. She went on to say that considering that the comfort letter was not a condition precedent to funding they could wait for Mr Ambani to sign it later on or it could be redrafted so as to come from RCom instead in which case Mr Shukla could sign it on their behalf. In the event, the latter is what happened.
54. The Bank says that on 22 February itself, when Mr Shukla attended the offices of White & Case in Hong Kong, he presented the POA (in the form received by the Bank i.e. with the guarantee annexed) and then signed the guarantee on behalf of Mr Ambani along with various transaction documents including the Facility itself. The signed version of the guarantee has the footer described above although without the “v8” which no doubt was the version number. The header now simply said “Execution Version”. The signature page states that it was executed as a deed by Mr Shukla as attorney for Mr Ambani pursuant to a power of attorney dated 17 February 2012. It is then witnessed.
55. Scanned copies of the POA along with signature pages for the guarantee, the facility and other transactional documents were circulated later on the 22 February.
56. On 22 February 2012, in order to register the Facility with the Reserve Bank of India, the Bank filed a 'Form 83' which formally reported the loan pursuant to the Foreign Exchange Management Act 1999. This document expressly refers to the personal guarantee to be provided by Mr Ambani. This was a public filing and it was signed by Mr Joshi and Mr Shenoy.
57. On 24 February 2012, RCom sent the Bank a request for a "*No Objection Certificate*" which was a Condition Precedent under the Facility. This referred to a "*Personal Guarantee*" to be provided by Mr Ambani. It also enclosed the execution version of the Personal Guarantee. The parties' legal advisors issued their legal opinions as to Indian law. RCom's legal advisor's legal opinion notes that they have reviewed the "*Support Letter dated 22 February 2012*" as well as the PoA.
58. By early 2017, RCom was experiencing difficulties in meeting its financial obligations under the Facility. By a letter dated 28 February 2017, the Bank made an initial demand on Mr Ambani. And then, as pleaded in paragraph 28 of the Particulars of Claim, the Bank sent further demand letters dated 10 August, 23 August, 25 September, 13 October, and 20 November 2017. After the sums due from RCom had been accelerated, there was a further demand from the Bank dated 21 June 2018. These are all admitted in paragraphs 13 and 16 of the Defence. As noted above, Mr Ambani made no response to any of them.
59. In the meantime, by an email dated 21 May 2018, Mr Garg informed Mr Wang of CDB that the National Companies Law Tribunal in Mumbai had declared a 270 day moratorium on any action to enforce any security interest in respect of RCom and other companies in

the Group. The email stated “As per the Facility Agreement dated 22 February 2012 which is backed by a personal guarantee...”

MR AMBANI’S CASE ON THE FACTS

60. I deal below with some general points made by Mr Ambani as to his position and role within RCom, but on the chronology, I take his evidence as from 19 November 2011.
61. He says that he was sent a briefing note by Mr Joshi following the meeting on 16 November which referred to the security package required but which did not make any mention of any personal security or comfort being provided by him. That would make sense on the timeline because at that stage there was certainly no question of any guarantee being sought.
62. He says that he did not see the email from Mr Joshi sent on 24 November 2011 (see paragraph 23 above) at the time, because he was not copied in. This in itself is somewhat surprising since it was a response to the letter from Mr Tao addressed to Mr Ambani. In any event, Mr Joshi’s email made reference to the comfort letter among other things, and Mr Ambani does recall having discussed this matter with Mr Joshi at the time. While he had never provided a personal comfort letter before he says that he understood that it would not impose any legal obligations on him to pay on default. And he would not in any event have agreed to give a personal guarantee to cover this Facility.
63. Mr Ambani then says that following his emails of 14 December 2011 (see paragraph 31 above) there were no further communications between him and anyone at the Bank prior to completion on 22 February 2012. He says that “at no time had it been suggested to me that I should be providing a personal guarantee, and at no time had I agreed to provide one.” Nor was he provided with any of the later emails passing between RCom and the Bank, or their lawyers, which made reference to the guarantee.
64. So far as the board meeting of 10 February 2012 is concerned (see paragraph 40 above) Mr Ambani noted that the minutes made no reference to the guarantee and says he would have to have reported it to the board as a matter of corporate governance.
65. As for the comfort letter which was to be provided at completion (see paragraphs 39, 40 and 53 above), he said that this was consistent with his understanding that all he had ever agreed to provide was a non-binding document of this kind.
66. As for the POA, it is necessary here to recount Mr Ambani’s evidence precisely. His witness statement says this:

“50. In terms of the power of attorney itself, I only have a vague recollection of signing it. However, to the best of my recollection, and based also on a review of the available documents, the sequence of events was as follows:

- a. The stamp paper was purchased for 100 rupees on 10 February 2012, and bears an initial stamp of that date,
- b. I signed the power of attorney on 17 February 2012.. The three page document had no attachment or annexure and was given to me by one of my assistants. I signed it in my office in Mumbai. Neither Mr. Shukla nor the notary, Ms V N Nadar, were present.

- c. So far as I can recall, before signing, I briefly read the document to check what it was I was agreeing to. As is clear on the face of the document, it was a power of attorney under which I was appointing Mr. Shukla to sign a "*Support Letter*" on my behalf in favour of the Chinese Banks. This accords with my understanding of the arrangements, namely that I had agreed to provide a comfort letter.
- d. I did not discuss the power of attorney with Mr. Shukla at the time and I do not recall having any discussions with him regarding any aspect of the proposed facility with the Chinese Banks.
- e. When I sign legal documents, I generally initial the bottom of each page of the document being signed to show that the page in question forms part of the document. It can be seen that the first two pages of the power of attorney have been initialled by me at the bottom of each page; the third page bears my signature. As such, all three pages bear either my initials or my signature.
- f. The power of attorney did not have any attachment. If it had had an attachment, and I had been happy that it was the correct attachment (i.e. a comfort letter), I would have initialled that as well, in line with my usual practice. If it had attached a personal guarantee, I would have demanded an immediate explanation and refused to sign the power of attorney at all, as that was not what I had agreed to.
- g. After I signed the power of attorney, I did not see it again. As I recall, my assistant took the document away to deal with it as appropriate.
- h. After I signed the power of attorney, it appears that it was taken to Ms Nadar who attested my signature and applied the appropriate stamp to evidence that the document had been attested by a notary public. I am informed by Khaitan & Co (my legal advisers on Indian law) that Ms Nadar should not in fact have attested my signature without witnessing me signing the document. I am further informed by Khaitan & Co that the power of attorney does not appear to have been notarized but merely attested.
- i. The document was then signed by Mr. Shukla above the words "*Accepted by Attorney*". I was not present and I do not know where he signed it, although it seems to have been later in the day on 17 February. Nor do I know whether any documents were attached when he signed it. I note that ICBC rely on a version of the power of attorney which has been signed by both Mr. Shukla and me and which has, as an attachment, a draft guarantee marked "*White & Case Draft February 13, 2012*". Mr. Balmain refers to this as the "*Guarantee PoA*". The draft guarantee attached to the Guarantee PoA is not initialled by me and I can confirm that I never saw such a document when I signed the power of attorney - it was not attached and it was not separately put before me when I signed.
- j. At some time between 17 and 21 February 2012, a "*certified true copy*" stamp was applied to the front page purporting to certify that the document was a true copy of the original. However this document was not signed by me; rather it was signed by Mr. Subramaniam "*Far Reliance Communications Limited*".

67. Accordingly, the essential thrust of Mr Ambani's evidence is not merely that he was unaware that the POA was in respect of a guarantee, he was never aware at any stage that this was being required as security by the Bank. He had no inkling of it at all. There are a number of obvious and very serious problems with this account:

- (1) First, if this is correct, it follows from the clear content of the contemporaneous documents dealing with the requirement of a guarantee, RCom's agreement to provide it and later discussions of drafts, that Mr Ambani was being kept in the dark by some of the most senior representatives of his own company; further, if that is right, they knew that he was ignorant of the matter of the guarantee because the only way he would have known about it is if they had told him;
- (2) If that is right then, for some reason, those representatives, in particular Mr Joshi and Mr Subramaniam (and Mr Shukla at the time of signing the POA and thereafter)

had decided deliberately to conceal the proposed guarantee from Mr Ambani. More than that, Mr Joshi deliberately misled Mr Ambani as to why the POA was required by saying that it was for the signing of the comfort letter; it must also follow that, on Mr Ambani's account, the reason why the annexure to the POA which he signed was absent was deliberate, so as to ensure that he did not realise the true nature of what he was signing; therefore, these senior executives had decided to embark upon serious dishonesty as against Mr Ambani with no obvious motive;

- (3) When I put this point to Mr Howe QC for Mr Ambani, he was unable to answer it, save to say that perhaps, it might not have been a case of dishonesty but overenthusiasm for the deal on the part of the executives. The problem with that is that there is no evidence from Mr Ambani (or anyone else) as to the latter and anyway, that would be carrying enthusiasm to an absurd and risky extent so far as they were concerned;
- (4) It also follows, on Mr Ambani's case, that those same executives were also prepared to mislead RCom's own lawyers and JSA Law;
- (5) Moreover it was a dishonesty which was likely to get discovered when (as originally intended) Mr Ambani turned up in Beijing for the signing ceremony which would have included his signing the guarantee; it also ran the risk of being discovered by reason of, for example, the filing of the Form 83 which was a public document; further, it would have been discovered at any time in the future had Mr Ambani cause to look at the Facility Agreement. And of course, ultimately, it was bound to come out in the event that the Bank had reason to make demand upon the guarantee-which is of course what has now happened. In this context it is remarkable that Mr Ambani made no response at all to the various written demands upon the guarantee sent to him, as referred to above. On his case, he would have been outraged. So far as the demand letter dated 21 June 2018 is concerned, all he says, at paragraph 66 of his witness statement, is that this letter must have been received by his office and marked to the relevant person in RCom for a response, it not having been brought to his attention at the time. That seems highly implausible since it was addressed to him and he was Chairman of the company. As for Mr Garg's email dated 21 May, Mr Ambani says in paragraph 65 of his witness statement that he has been informed by Mr Garg that as at that date Mr Garg had assumed there was a personal guarantee in place on the basis of the record of RCom. If so (and there is no direct evidence from Mr Garg) it was obviously not being kept a secret within RCom;
- (6) A truly remarkable feature of Mr Ambani's case is that he has himself proffered no explanation as to why he should have been deceived in this way, nor has he provided any evidence as to what he did when he discovered, in early 2017, the existence of the guarantee signed by Mr Shukla. He does not say, for example, that he took action against the representatives concerned for what, on his case, would have been a gross breach of duty which had potentially catastrophic consequences for him. As to this, Mr Howe QC cautioned the Court against speculation. But that submission has no real force when the person who could have provided evidence to answer these obvious questions has simply declined to do so; in argument, Mr Howe QC accepted that Mr Ambani's position was that "he hasn't got a clue" how all of this came about. He went on to say that there were a number of "possibilities" and then (quite properly) he was not in a position to suggest any of them. But Mr Ambani was, and is;

- (7) It is true that Mr Ambani does say that Mr Shukla resigned from the Reliance Group in 2017. However he does not state that this had anything to do with the question of the guarantee; that would have been the obvious opportunity to say so if it was the case. And as for the positions of Mr Joshi and Mr Subramaniam, Mr Ambani says nothing. He does not suggest that they were sacked or had to resign because of the guarantee issue or that they were taken to task in any way at all. None of this makes any sense given Mr Ambani's case; yet further, there is no evidence from them before me;
- (8) Further, in reality, it is very difficult to believe that Mr Ambani so completely distanced himself from discussions with his staff about the negotiations for the Facility. There is no real explanation as to why he should suddenly drop out of the picture entirely after 14 December. I can see that he did not get involved in the minutiae but it is telling that when the negotiations needed something of a push it was he who wrote to his counterpart at the Bank. Moreover, if he received a report from Mr Joshi on 19 November as to the current state of play on the refinancing (see paragraph 33 of his witness statement) it is hard to see why he did not then receive reports later on, especially when being asked to provide a personal guarantee; I consider it extremely unlikely that his role was really limited to simply chairing board meetings with little or no interest or role in what RCom was doing, especially in the context of a major refinancing which was needed urgently. On this aspect, Mr Howe QC points to the lack of documents before me which show his involvement in the negotiations. I accept that in relation to documents going directly between the Bank or its advisors and him, but that does not take the matter very far as to his involvement because that turns on the communications between the RCom executives and him. I am not at this stage prepared to assume that Mr Ambani has made all relevant disclosure in that regard;
- (9) Equally implausible is the notion that Mr Ambani, as principal shareholder in RCom, never read the Term Sheet (which referred to the guarantee then the Support Letter) or the Facility itself for which he had been pressing so hard, until these proceedings; or that, as a highly experienced and successful businessman, he would have signed a POA in respect of a document to be signed by the attorney which, according to the terms of the POA was annexed to it, but was absent. In addition, one might have thought that in those circumstances and given that Mr Shukla was not with him when he signed, Mr Ambani would at least contact Mr Shukla to make sure that the correct document would be appended in due course;
- (10) Furthermore, given that, on his case, all he was providing was a non-binding comfort letter it is hard to see how that would square with the type of document contemplated by the references to the Facility Agreement in the recital which certainly suggest a more important and binding document. The comfort letter was not defined as a Finance Document within the Facility.
68. Mr Howe QC points to the fact that the Bank has been unable to produce one contemporaneous document between Mr Ambani and it, making reference to the proposed guarantee from him. Had the Bank done so, that would have put its claim beyond doubt, in my judgment. The fact that the Bank has been unable to do so on this application does not necessarily mean that there is anything amiss with its own case. It just means that most of the negotiations proceeded with senior executives at RCom. The Bank was entitled to assume that Mr Ambani was going to provide the guarantee, in circumstances where either,

as was initially contemplated, Mr Ambani himself would be attending the completion and signing it or where an authorised signatory would be there bearing a POA with a draft of the guarantee attached having been duly attested by a notary.

69. Mr Howe QC further submits that the whole episode of “coding” the guarantee may cast some doubt on the Bank’s case. While I agree that at present, there is no clear explanation as to why RCom told the Bank that this was required, I do not think it particularly assists Mr Ambani. If in truth he was prepared to give a guarantee he may have had his own reasons for coding it. It does not, in my view, make his essential account any more plausible.
70. It is further submitted that it is odd that the copy of the annexure as received by the Bank was not initialled by Mr Ambani or indeed the notary first time round. Mr Ambani says that this would have been his practice had it been there. I do not think there is much in this point. If he was as careful as that, it is very difficult to see why he should sign the POA at all where the attachment (which he would have wished to initial for identification purposes) was not even there.
71. There is nothing, in my view, in the points made about the header or footer to the guarantee. Its wording was precisely the same in all copies and it is not surprising that the final version as executed should state at the top “Execution Version”.
72. Mr Ambani also says that had he provided a guarantee, then he would have felt bound to mention it at the board meeting of 10 February 2012 as a matter of corporate governance. I do not think there is much in this. It did not require board approval and as he had already agreed to provide it, consistent with the Term Sheet, it is not clear to me that he would have to have mentioned it. In any event, it can hardly be suggested that the board was unaware of it given all the previous communications.
73. I appreciate, also, that the guarantee, unlimited as it was, would be for an extremely large sum of money. But I do not consider that this makes the giving of it inherently improbable in circumstances where, at the time, Mr Ambani was the principal shareholder in a group of companies of the size noted above.

ANALYSIS

Actual authority

74. If Mr Ambani’s evidence as to his lack of knowledge of any proposed guarantee is rejected, there would be no reason not also to reject his evidence that there was no annexure to the POA which he signed. Alternatively, any lack of an attachment would make no difference since he knew what he was authorising Mr Shukla to sign on his behalf. In this factual scenario, Mr Shukla (and indeed Mr Joshi, had it come to it) would plainly have had actual authority to sign the guarantee even if it was referred to as a Support Letter.
75. This form of actual authority does, however, depend on the court disbelieving Mr Ambani’s account at this summary stage and I do not consider that I should do so. In my judgment and in relation to actual authority on the facts, as it were, Mr Ambani’s defence has a real prospect of success - but only just.

76. However, the Bank says that even if it would be inappropriate to grant summary judgment on the above basis of actual authority, the terms of the POA itself, even one which was missing its annexure, would amount to a grant of actual authority on the basis of an objective interpretation of that document in context - and irrespective of what Mr Ambani subjectively knew or thought.
77. As to that exercise of interpretation it is common ground that as this was a POA executed in India, Indian principles of interpretation should apply. Those principles include the following:
- (1) powers of attorney must be interpreted in the light of the purpose for which they have been executed. That purpose is to be ascertained by reference to the need which gave rise to the execution of the document, the practice of the parties and the manner in which the parties themselves understood the purpose of the document;
 - (2) the purpose for which a power of attorney is executed must be evident primarily from the terms of the power itself;
 - (3) a word used in a power of attorney is to be interpreted in the context of the document as a whole;
 - (4) the operative part of the deed is controlled by the recitals;
 - (5) if there is any ambiguity or uncertainty as to which particular documents the parties had in mind when referring in the POA to the "Support Letter" that ambiguity or uncertainty can be resolved by reference to the facts and circumstances of the case or the nature or course of dealings.
78. The Bank says that properly understood, and even without the annexure, the POA was authorising Mr Shukla to execute the guarantee. That is because the Preamble refers to the Facility Agreement which requires the Support Provider to execute the Support Letter. The Facility Agreement (at that time necessarily in draft but I do not accept that anything turns on this) defined the Support Letter as the "English-law governed agreement entered into on or about the Signing Date between the Agent and the Support Provider" the latter itself being identified as Mr Ambani by reference to his passport number. It was also provided that the execution of the Support Letter was a condition precedent to drawdown under the Facility.
79. It was thus clear, submits the Bank, that the POA was authorising the execution of an enforceable and important document. If Mr Ambani had not bothered to read the draft Facility Agreement, that is irrelevant because the reference to the Facility Agreement in the POA meant that in construing the latter, one had objectively to refer to the terms of the former.
80. I see all of that, but on the other hand:
- (1) The POA clearly contemplates that the particular document to be executed on behalf of Mr Ambani was to be ascertained and defined by reference to the copy attached to it, but on this hypothesis, it was not there;

(2) The Bank also seeks to draw support from other matters such as the prior course of dealings in respect of how the “Support Letter” came to be substituted for the guarantee, and other dealings between the bank and RCom which make clear references to the guarantee. The trouble with this point is that for it to be made, or made fully, the Court would once again, have to reject Mr Ambani’s evidence since on his case, whatever communications there were between the Bank and its lawyers and those at RCom, they were entirely unknown to Mr Ambani. I have already declined, however, to reject his account conclusively at this stage.

81. In those circumstances and as with the first form of actual authority alleged, I think that Mr Ambani has established a real prospect of a successful defence - again, just.

Apparent Authority

82. I therefore turn to the next argument made by the Bank to establish a valid agency, which is based upon apparent authority. It is common ground that English law governs this matter. In order for apparent authority to be established, there needs to be a representation as to the agent’s authority which comes from the principal. Apparent authority cannot derive simply from representations made by the putative agent himself as to his own authority. It is, in effect, a species of estoppel which is why the representation must come from the party sought to be bound i.e. the putative principal.

83. Here, the Bank argues that the POA itself constituted a representation made by Mr Ambani that Mr Shukla had the requisite authority, even if, in truth, he did not.

84. However, the exercise of interpreting the POA as constituting such a representation is really the same as construing it for the purpose of conferring actual authority. In argument, Mr Thanki QC, for the Bank, was disposed to accept this subject only to the proviso that there could be a difference of outcome if my rejection of the actual authority case was due to my application of Indian law principles of construction which are in fact less expansive than their English law equivalents. I see that in theory, but my analysis does not turn on any such distinction. For essentially the same reasons which I gave in respect of the actual authority argument based upon the terms of the POA, this particular argument from apparent authority does not entitle the Bank to summary judgment either.

85. That leaves a second iteration of the apparent authority argument. This is to the effect that the POA, rather than being a representation that Mr Shukla was authorised to sign the actual guarantee (or guarantee in substantially the same terms), constituted a representation that Mr Shukla was authorised to later attach the annexure to the POA, upon which act the POA would become complete, as it were. It is said that at the very least, by signing and providing the POA, Mr Ambani put Mr Shukla into a position where he was able then to represent his own authority by arming him with a document, as it were, which then enabled him to define what it was he could sign on behalf of Mr Ambani, provided that it was consistent with the words of the Preamble.

86. It is not in dispute that there is a species of apparent authority which includes the case where the principal has put the agent into a position where he is able to make representations as to the existence of his own authority, in effect, as far as the outside world is concerned, clothing him with authority to then say what he is authorised to do. This

species does not offend against the rule that apparent authority cannot be established solely by reference to the agent's own representations as to his authority.

87. However, it is at least properly arguable here that this form of apparent authority does not work where on any objective basis, all the Bank knew was that the putative agent had a POA which was complete. If the Bank thought that Mr Shukla had been supplied with a POA which did not have the attachment which it expressly said it did have, it is not at all clear that the Bank would have accepted it in the knowledge that he had just added it. Especially in the light of the earlier communications between the Bank and RCom which focused on the need to have that attachment (or, as was suggested at one stage, very clear wording indicating what Mr Ambani would be signing). And again, to the extent that all of this had to be considered in context and having regard to the parties' dealings, it seems to me that one is likely to be driven back again to seeking to reject at least some parts of Mr Ambani's evidence at this stage.
88. Accordingly, I do not think that this alternative version of the apparent authority argument is sufficient to entail summary judgment for the Bank.

Conditional Order

89. I therefore turn to the alternative application made by the Bank in the event that it does not secure summary judgment, which is for a conditional order on the basis that the defence, while possible, is improbable. I have no difficulty at all in reaching that conclusion. For all the reasons given above, I consider that Mr Ambani's evidence is inexplicably incomplete, implausible and highly unlikely. This is indeed a case where I was very nearly prepared to give judgment. I think it is highly probable that at trial his defence will be shown to be opportunistic and false.

CONCLUSION

90. Accordingly, and despite Mr Howe QC's submissions to the contrary, I consider that this is a plain case for the making of a conditional order. That is what I shall do but its precise terms will now be the subject of the further evidence referred to above and further submissions in the light of it.
91. The application for summary judgment itself, however, is dismissed.
92. I am very grateful to Counsel for all the helpful oral and written submissions.