IN THE WESTMINSTER MAGISTRATES' COURT

BEFORE

DISTRICT JUDGE (MC) SAM GOOZÉE
Appropriate Judge

The Government of India
(Requesting State)
V
Nirav Deepak Modi
(Requested Person)

JUDGMENT

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Background and Chronology of proceedings

1. This is an extradition request submitted by the Government of India, the Requesting State("GOI") for the extradition of Nirav Deepak Modi, the Requested Person (NDM). The request is governed by the Provisions of Part 2 of the Extradition Act 2003 ("EA 2003"). India is a designated Part 2 country by virtue of the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003.

2. The return of NDM, an Indian national, is sought for the purposes prosecution. On the 27th July 2018, the GOI issued a request for the extradition of NDM. Initially, NDM was subject to two sets of criminal proceedings. The first set of proceedings are brought by the Indian Central Bureau of Investigation ("the CBI case"). The second set of proceedings are brought by the Indian Enforcement Directorate ("the ED case"). In short, the CBI case relates to a large-scale fraud upon the Punjab National Bank and the ED case relates to the laundering of the proceeds of that fraud.

3. On the 11th February 2020, the GOI issued a further extradition request for NDM for two additional offences which he now faces as part of the CBI case. In short, these offences relate to allegations that NDM has interfered with the CBI investigation by causing the disappearance of evidence and intimidating witnesses.

4. On the 27th July 2018, the GOI submitted a request for the extradition of NDM in relation to the ED case. On the 24th August 2018, the GOI submitted a request in relation to the first CBI case. Both requests were certified by the Home Office on the 28th February 2019. On the 28th February 2019, the Secretary of State issued a

certificate in accordance with s.70(1) of the 2003 Act, certifying the requests were valid and had been made in the approved way.

5. The RP was arrested on 19th March 2019. He appeared before an appropriate judge at Westminster Magistrates' Court on the 20th March 2019. Consent was put and refused. The extradition hearing was opened and adjourned. The RP was remanded in custody and has been in custody throughout the proceedings.

6. In relation to the supplemental CBI request, on the 11th February 2020, the GOI issued a further extradition request for NDM for the two additional offences which NDM faces as part of the CBI request. On the 20th February 2020 the Secretary of State issued a certificate in accordance with s.70(1) of the 2003 Act, certifying the request was valid and had been made in the approved way.

7. NDM was produced at Westminster Magistrates' Court on the 12th March 2020 and arrested in relation to the further request. Consent was put and refused. The extradition hearing was opened and adjourned to be joined with the earlier requests. Again, NDM was remanded in custody.

8. The full hearings took place before me over two weeks. Week commencing 11th May 2020 and week commencing 7th September 2020. On the 3rd November 2020 I heard submissions on the admissibility of evidence and gave a written ruling in order to assist Counsel with their final submissions. I received final written submissions which were expanded upon orally on 7th and 8th January 2021. I reserved judgment until Thursday 25th March 2021.

9. Clare Montgomery QC leading Ben Watson of Counsel represented NDM. Helen Malcolm QC leading Nicholas Hearn of Counsel represented the GOI.

10. Throughout the proceedings NDM appeared by live link from HMP Wandsworth. This was at his request and an appropriate application was made on his behalf for a live link direction. This was not opposed by the GOI. I was satisfied it was in the interests of justice. NDM did not give evidence at the extradition hearing. I was satisfied he was able to fully participate in these proceedings. I am very grateful to HMP Wandsworth for providing the necessary resources to facilitate live link production at every stage of the extradition hearing.

11. I will say from the outset that in the course of these proceedings, in addition to the core bundle, authorities bundles and extensive written submissions, I received 16 volumes of evidence and information from the GOI and 16 bundles of expert reports and defence evidence. A total of 32 lever arch folders of documents, which I have considered. I do not intend to summarise all the evidence that has been provided to me but just the evidence which I consider relevant and probative to the challenges and issues I must determine. It does not mean I have not considered all the evidence and documents submitted by the parties.

12. Unlike the evidence from the Defence, the evidence produced by the GOI in the case, through no fault of Counsel, was poorly presented and very difficult to navigate. Observations I note were similarly made by the Senior District Judge (Magistrates' Courts) in *Mallya*. I hope the GOI take these observations on board in relation to future requests. I am indebted to Counsel for both the GOI and NDM, the CPS and NDM's solicitors for the considerable time spent providing me with indexes and schedules to assist me, as well as attending at Court to update physical bundles.

The Challenges to extradition

13. Ms Montgomery and Mr Watson raise the following issues to persuade the court not to grant the requests:
    i. whether they are extradition offences (s.137 of the 2003 Act)
    ii. whether there is a prima facie case - whether there is evidence which would be sufficient to make a case requiring an answer by NDM if the proceedings were the summary trial of an information against him (section 84 of the 2003 Act)
    iii. whether extradition is compatible with the NDM's Convention rights, in particular Articles 3 and 6 (section 87 of the 2003 Act)
    iv. Oppressive due to NDM's mental health (section 91 of the 2003 Act)

The Requests

The CBI case

14. On the 29th January 2018, the CBI received a written complaint from Mr Avneesh Nepalia. Mr Nepalia is the Deputy General Manager of the Punjab National Bank ("PNB"). The PNB is a major Indian Bank which is majority owned by the Indian Government. Mr Nepalia, on behalf of PNB, alleged that the Bank had been the victim of a large-scale fraud perpetrated by NDM, a number of named associates and staff members at the PNB. The allegations centre around a number of NDM's firms and their fraudulent use of a credit facility offered by PNB known as "Letters of Undertaking" ("LOUs").

15. The LOUs are a form of bank guarantee which facilitate foreign transactions. When a Bank issues an LOU on behalf of a customer, it allows the customer to obtain credit from a foreign bank. Mr Nepalia explained that the bank had discovered that NDM's firms had fraudulently obtained a number of LOUs. The LOUs had been issued by two officials at PNB named Mr Gokulnath Shetty and Mr Hanumant Kharat. Mr Nepalia explained that he believed the LOUs had been issued fraudulently because (i) the appropriate procedures had not been followed (ii) appropriate documentation had not been obtained (iii) the LOUs had not been recorded with entries in the bank's system and (iv) the LOUs had been issued for the payment of import bills but were not in fact used for that purpose.

16. In his initial complaint, Mr Nepalia described that 8 LOUs had been fraudulently issued to NDM's firms. He estimated at the time of his complaint that the fraudulent activity had resulted in a loss to PNB of INR 280.70 crores (approx. USD 44m).

17. On the 23th February 2018, Mr Nepalia again wrote to the CBI. He informed them that further investigations by the bank had revealed that, in fact, 150 fraudulent LOUs had been issued to NDM's firms. The cumulative sum of the LOUs was INR 6498.20 crores (USD 1015.35m). The companies to which the LOUs had been issued are as follows (also referred to in defence submissions as the "3P partnership companies")

    i. M/s Diamond R US (issued with LOUs amounting to INR 2210.61 crores)

ii. M/s Solar Exports (issued with LOUs amounting to INR 2152.88 crores)
iii. M/s Stellar Diamonds (issued with LOUs amounting to INR 2134.71 crores)

18. There is no dispute these companies are part of NDM's Firestar Group.

19. An investigation was subsequently launched by the CBI and the CBI allege the following facts:
    i. M/s Diamond R US had a current account with PNB. Documents submitted to the PNB confirmed that initially the partners were NDM and Mehul Choksi. Subsequently PNB was informed about a change in constitution of the firm. The new partnership deed confirmed that the partners were NDM (90%), ANM Enterprises Ltd (5%) and NDM Enterprises Ltd (5%).
    ii. M/s Solar Exports had a current account with PNB. Documents submitted to the bank confirmed that the partners in the firm were "Nirav Family Trust" and "Nirav Modi Family Trust". M/s Stellar Diamonds had a current account with PNB. Documents submitted to the Bank confirmed that the partners in the firm were "Nirav Family Trust" and "Nirav Modi Family Trust".
    iii. PNB's internal guidelines in relation to the issuing of LOUs require the transactions to be recorded in the "Core Banking System" ("CBS") to ensure transparency and so that the bank can monitor its liabilities in respect of any LOUs that have been issued.
    iv. A number of PNB staff had conspired with NDM to ensure LOUs were issued to his companies without ensuing the companies were the subject to the required credit check, without recording the issuance of LOUs and without charging the required commission to the transactions.
    v. NDM appointed dummy partners in the firms in January 2016 without informing PNB. However, the firms always remained under the direct control of NDM. He continued to sign the Income Tax Returns and Balance sheets of these firms.

20. As a result of the CBI's findings, NDM was charged with offences contrary to Section 120B of the Indian Penal Code (IPC) (Criminal Conspiracy) read with Section 420 of the IPC (Cheating and Dishonestly Inducing Delivery of Property), 409 of the IPC (criminal breach of trust by public servant or by banker, merchant or agent) and

contrary to s.13 of the Prevention of Corruption Act 1988 (Criminal Misconduct by a Public Servant).

The ED case

21. The Directorate of Enforcement ("ED") is a law enforcement agency and economic agency responsible for enforcing economic laws and fighting economic crime in India. As a result of the CBI investigation a parallel investigation was instigated by the ED into offences of suspected money laundering of the proceeds of the fraud reported by PNB. The ED investigation was instigated on the 14th February 2018.

22. The ED's findings can be summarised as follows:

    i. NDM with his associate Mihir Bhansali and others, arranged for dummy partners to be appointed in respect of each of the firms said to be the recipient of the fraud upon PNB (namely, M/s Diamond R US, M/s Solar Exports and Stellar Diamonds). The individuals chosen to be dummy partners were paid a meagre cash sum and did not perform any genuine functions ordinarily associated with legitimate partners. The firms remained under the direct control of NDM.

    ii. The ED discovered that NDM had set up a number of overseas companies in Hong Kong and Dubai which received the proceeds of the fraud on PNB. Dummy directors / owners/ managers were also appointed in these companies, although the companies remained under the direct control of NDM. The companies were used for the circular rotation of diamonds, pearls, gold and jewelry at highly inflated values to give the impression that the companies in receipt of the LOUs issued by PNB were engaged in legitimate trade.

    iii. The ED investigation identified a number of ways in which the proceeds of the PNB fraud were diverted by NDM and his associates. These included, transfer of USD 50m to Firestar International Pvt Ltd, India as a "Foreign Direct Investment", a transfer in excess of USD 50m into a US based jewelry rental company called "Bailey Bank and Biddle" owned by NDM, illegal payments and loads to NDM from Hong Kong and Dubai based companies under his control, purchases of property using proceeds of the PNB fraud that had been

channeled through multiple companies under NDM's control and through accounts of close family members. Funds had also been transferred to various bank accounts held in the names of various entities and individuals in Switzerland, Singapore and other overseas jurisdictions, some of which had been identified and seized by ED.

23. As a result, NDM was charged with an offence contrary to Section 3 of the Prevention of Money Laundering Act 2002.

Supplementary CBI Request

24. It is alleged that NDM conspired with others to remove original documents relating to the LOU applications from PNB bank premises to those offices of a law firm, Cyril Amarchand Mangaldas ("CAM"). CAM were misled into accepting the documents as they were informed that the documents they were receiving were not original documents. It is also said NDM conspired with others to move the dummy directors of the Dubai based companies (utilised in the PNB fraud) to Cairo where they were held against their will, pressured to sign false statements and deprived of their mobile phones and electronic devices which were subsequently destroyed. It is finally said he conspired with others to destroy a server in Dubai in which all the data relating to NDM's companies was stored. It is also said that during a phone call on the 19th or 20th June 2018 NDM threatened to kill Ashish Lad.

25. Consequently, NDM faces two further allegations which are categorized in Indian law as an offence under s.120B read with s.201 IPC – criminal conspiracy for causing disappearance of evidence of offence or giving false information to screen offender; an offence under s.201 IPC – causing disappearance of evidence of offence or fiving false information to screen offender and finally an offence under s.506 IPC – criminal intimidation to cause death.

Extradition Offences:

26. S 78(4)(b) EA 2003 requires me to decide whether the offences specified in the request are extradition offences. I will deal with this issue later in my judgment.

Prima Facie Case

27. India is not designated pursuant to s.84(7) of the 2003 Act. Section 84 (1) Extradition Act 2003 requires me to decide whether there is evidence which would be sufficient to make a case requiring an answer by NDM if the proceedings were the summary trial of an information against him.

28. In terms of my approach, I remind myself of the relevant passage in *Devani v. Kenya [2015] EWHC 3535 (Admin)* where Aitkens LJ analysed the correct approach to s.84(1):

" 47. In the case of a country to which s.84(1) EA 2003 applies, a three-stage process is involved once the DJ is satisfied that the request document itself establishes that the conduct alleged is criminal in accordance with the laws of the requesting state. The first stage, following the decision of the House of Lords in Norris v. Government of the United States of America, is to identify, for the relevant charge, the "essence of the conduct" which is alleged by the requesting state. Secondly, the DJ must determine, upon the assumption that the relevant conduct had occurred in the UK, whether that conduct would be an offence under the UK law. For this purpose, the requesting state will often produce "notional English charges" identifying the particular UK offence which is said to be constituted by the "essence of the conduct" alleged. Thirdly, the DJ must determine whether the requesting state has proved, on the basis of all admissible evidence (taking account of the admissibility rules set out in sections 84(2) – (4), s.202 and s.205 of the EA) whether there is sufficient evidence to substantiate the conduct alleged.

48. In R v. Governor of Pentonville Prison ex Alves, the House of Lords held that under paragraph 7(1) of Schedule 1 to the Extradition Act 1989, which is in different terms to s.84 of the EA, the correct approach to be applied by a magistrate on an extradition request was to decide whether there was a case to answer, by reference to the well known test set out by Lord Lane CJ in R v. Galbraith. The same approach has been adopted in relation to s.84(1) of the EA: see, for example, the statement of Sir Brian Leveson PQBD at [16] of Ravi Shankaran v. Government of the State of India.

49. Putting the matter this way could be mildly confusing. Lord Lane identified the test in Galbraith as the one to be used by judges in criminal trials when they have to decide whether to accede to a submission of "no case to answer" at the end of the prosecution case. Under s.84(1) the DJ has to do the opposite: viz. decide whether there is a case to answer. Furthermore, it is now well established that in an extradition case to which s.84(1) applies, the court is required to have regard to all the admissible evidence before the court, including that of the requested person. In our view, the correct way to put the matter is to say that the DJ who has to decide whether there is a case to answer for the purposes of s.84(1) must determine whether, on one possible view of the facts, he is satisfied that there is evidence upon which the requested person could be convicted at a summary trial of an information against him, upon the basis of the national English charges. In other words, the DJ must apply the test referred to at the end of the celebrated passage in Lord Lane's judgment in Galbraith at 1042, but with the additional gloss that, in deciding whether there is a case to answer, the DJ should consider all the admissible evidence before him, including evidence called on behalf of the requested person.

50. For convenience we will call this "the prima face case test".

29. I also remind myself of the approach laid down in *R v. G & F [2012] EWCA Crim 1756*. In that case, the Court of Appeal (Criminal Division), Aitkens LJ summarized the approach as follows:

"36. We think that the legal position can be summarized as follows: (1) in all cases where a judge is asked to consider a submission of no case to answer, the judge should apply the "classic" or "traditional" test set out by Lord Lane CJ in Galbraith. (2) where a key issue in the submission of no case is whether there is sufficient evidence on which a reasonable jury could be entitled to draw an adverse inference against the defendant from a combination of factual circumstances based on evidenced adduced by the prosecution, the exercise of deciding that there is a case to answer does involve the rejection of all realistic possibilities consistent with innocence. (3) However, most importantly, the question is whether a reasonable jury, not all reasonable juries, could, on one possible view of the evidence, be entitled to reach that adverse inference. If a judge concludes that a reasonable jury could be

entitled to do so (properly direct) on the evidence, putting the prosecution case at its highest, then the case must continue; if not it must be withdrawn from the jury".

30. My role is to consider whether a tribunal of fact, properly directed, could reasonably and properly convict on the basis of the evidence. I am not required to be sure of guilty in order to send the case to the Home Secretary. The extradition court must conclude that a tribunal of fact, properly directed and considering all the relevant evidence, could reasonably be sure of guilt.

31. I accept submissions made on behalf of the GOI by Ms Malcolm QC and Mr Hearn that I am not required to exclude all Mr Modi's various alternative theoretical possibilities and narratives; nor exclude his personal interpretation of the evidence, in order to find a prima face case has been established. As was stated in *Mallya v. India [2020] EWHC 924 (Admin),* to adopt such an approach would be to "truncate the test".

32. Put simply, following the test in *Devani (supra)* I must determine whether, on one possible view of the facts, I am satisfied that there is evidence upon which Mr Modi could be convicted.

Notional UK Charges:

33. **First request – CBI Request – "Conspiracy to defraud"**
NIRAV DEEPAK MODI, you are accused in a category 2 territory of the commission of offences constituted by conduct which, had it occurred within the jurisdiction of the United Kingdom, would have constituted the following offences:

1. That you, between the 1st September 2008 and the 30th June 2018, conspired with Neeshal Modi, Gokulnath Shetty, Manoj Kharat, Hemant Bhatt, Bechu Tiwari, Yashwant Joshi, Prafful Sawant, Vipul Ambani, Arjun Patil, Kavita Mankikar, Rajesh Jindal, Mohinder Sharma, Bishnubrata Mishra, Miten Pandya, Manish Bosamiya, Sanjay kumar Rambhia, Subhash Parab, Usha Ananthasubramanian, K. V. Brahmaji Rao, Sanjiv Sharan, Nehal Ahad, M/s Diamonds R US, M/s Solar Exports, M/s Stellar Diamond, Sanjay Prasad, Nehal Modi, Amit Magia, Sandeep Mistry and Mihir Bhansali, and others known and unknown to defraud the Punjab National Bank

('PNB'), by dishonestly causing and permitting the PNB to issue (1214) Letters of Undertaking (LOU) to the three accused NDM firms (being M/s Diamonds R US, M/s Solar Exports, M/s Stellar Diamond) as guarantee of loans in the form of Buyer's Credit, by divers wrongful means including:

i)) without there being in place any sanctioned credit limit for LOUs and/or any formal borrowing arrangements between the three NDM firms and PNB
ii) without providing any or any sufficient cash margin against the LOUs
iii) without paying the proper bank charges/commission
iv) without complying with the proper requirements as to registration and recording of foreign letter guarantees within the PNB, including entry on the CBS
v) on the basis that the sums thereby guaranteed were to be used wholly for the payment of legitimate suppliers; but where the funds obtained were in fact not wholly used for that purpose, but were dishonestly used to repay earlier loans and/or diverted to companies within Nirav Modi's control and/or
vi) without arranging funds to pay the amounts outstanding against 150 LOUs thereby causing wrongful loss to the PNB in the sum of INR 6805.24 crores (68,052.40 million), being the sum of 150 LOUs issued between 9th February 2017 and 23th May 2017 amounting to INR 6498.20 Crores (64,982.00 million) plus interest and other charges paid under the LOUs by the PNB to the Overseas Banks which had extended Buyer's Credit to the three accused firms.

Contrary to section 12 of Criminal Justice Act 1987

34. **Second request – Ed Request – Conspiracy – money laundering**

2. That you, between 1st March 2011 and 1st March 2020, conspired with Mr. Neeshal Modi, Mr. Nehal Deepak Modi Mr. Deepak Kumar Modi, Mr. Shyamsunder Wadhwa, Mr. Gokulnath Shetty, Ms. Purvi Maiank Mehta, Mr. Maiank Mehta, Mr. Saju Poulose Parokaran, Mr. Aditya Nanavati, Mr. Hemant Bhatt, Mr. Subhash Parab, Mr. Mihir Bhansali, Mr. Dharmesh Bothra, M/s Radashir Jewelery Company pvt. Ltd., M/s Solar Exports, M/s Stellar Diamond, M/s Diamonds R US, M/s Firestar International Pvt. Ltd., M/s Firestar Diamond International Pvt. Ltd, M/s Nirav Modi Trust, M/s Firestone Trading Pvt. Ltd., M/s Mak Business Enterprises Pvt. Ltd. M/s Bentley Properties Pvt. Ltd., Ms. Ami Nirav Modi, M/s Neeshal

Merchandizing Private Limited, M/s Belvedere Holdings Group Ltd., M/s Nirav Modi Ltd., M/s Yanike
Properties Ltd, M/s Diamond Holdings SA., M/s Central Park Real Estate LLC., M/s Pavilion Point Corporation, M/s Rhythm House Private Limited, M/s Pacific Diamonds FZE, M/s Fine Classic FZE and M/s Firestar Diamond FZE to conceal, disguise, convert, transfer or remove criminal property, namely the (direct or indirect) funds obtained by means of Buyer's Credit guaranteed by 1214 Letters of Undertaking worth USD 1015.35 Million issued by the Punjab National Bank knowing those funds to represent in whole or in part the proceeds of criminal conduct.

Contrary to section 1 of the Criminal Law Act 1977 and sections 327 and 334 of the Proceeds of Crime Act 2002

35. **Third Supplementary ED Request – Conspiracy to pervert the course of justice and perverting the course of justice (threats to kill Ashish Lad)**

NIRAV MODI, you are accused in a category 2 territory of the commission of offences constituted by conduct which, had it occurred within the jurisdiction of the United Kingdom, would have constituted the following offences:

1. That you on divers days between 01.09.2008 and 30.06.2018 conspired together with Neeshal Modi, Gokulnath Shetty, Manoj Kharat, Hemant Bhatt, Bechu Tiwari, Yashwant Joshi, Prafful Sawant, Vipul Ambani, Arjun Patil, Kavita Mankikar, Rajesh Jindal, Mohinder Sharma, Bishnubrata Mishra, Miten Pandya, Manish Bosamiya, Sanjay Kumar Rambhia, Subhash Parab, Usha Ananthasubramanian, K. V. Brahmaji Rao, Sanjiv Sharan, Nehal Ahad, Sanjay Prasad, Nehal Modi, Amit Magia, Sandeep Mistry and Mihir Bhansali to commit acts tending and intended to pervert the course of justice, namely:

(i) causing evidence relevant to a criminal investigation into a fraud committed upon the Punjab National Bank, to be removed from the premises of PNB, MCB, Brady House, Mumbai and concealed in the law firm Cyril Amarchand Mangaldas "CAM" with the intention of preventing that evidence being discovered by investigators.

(ii) interfering with witnesses relevant to the aforementioned investigation including by arranging for them to travel to, and remain in, Cairo, Egypt, where they were pressured to sign false statements.

(iii) causing evidence relevant to the aforementioned investigation to be destroyed, namely a server in Dubai; and the mobile phones and electronic devices which were taken away from the witnesses in Dubai and Hong Kong and destroyed.

Contrary to section 1 of the Criminal Law Act 1977 and common law

2. That in June 2018 you did an act tending and intended to pervert the course of justice, namely made a threat to kill Ashish Lad, a potential witness in the CBI investigation into an alleged fraud committed upon the Punjab National Bank.
Contrary to common law.

Admissibility of evidence

36. On the 3rd November 2020 I heard submissions from the parties in relation to the admissibility of evidence relied on by the GOI in these proceedings.

37. Where a RS has to prove a prima facie case under section 84 of the 2003 Act, the evidence it relies on has to be admissible under English rules of evidence or fall within the admissibility provisions in section 84 of the Extradition Act 2003.

Section 84 reads:

Case where person has not been convicted

(1)If the judge is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him.

(2)In deciding the question in subsection (1) the judge may treat a statement made by a person in a document as admissible evidence of a fact if—

(a)the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders, and

(b)direct oral evidence by the person of the fact would be admissible.

(3)In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the judge must in particular have regard—

(a)to the nature and source of the document;

(b)to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the judge to be relevant, it is likely that the document is authentic;

(c)to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact;

(d)to the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the judge in deciding the question in subsection (1);

(e)to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.

(4)A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (2).

(5)If the judge decides the question in subsection (1) in the negative he must order the person's discharge.

(6)If the judge decides that question in the affirmative he must proceed under section 87.

(7)If the judge is required to proceed under this section and the category 2 territory to which extradition is requested is designated for the purposes of this section by order made by the Secretary of State—

(a)the judge must not decide under subsection (1), and

(b)he must proceed under section 87.

38. In this case the parties set out the 8 categories of material as follows:

Category 1 – Affidavits from the investigating officers
Category 2 – documentary material attached to the affidavits
Category 3 – s.161 statements.

Category 3A – s.161 statements containing hearsay, or otherwise containing information apparently not within the witnesses' own knowledge
Category 3B – s.161 statements containing passages verbatim of other witnesses' statements.
Category 4 – statement purporting to exhibit documents without those documents appearing.
Category 4A – documents not apparently exhibited by any witness
Category 5 – Foreign language statements without original language copy provided.
Category 6 – statement taken other than by s.161.
Category 6A – statements in Category 6 containing hearsay, or otherwise containing information apparently not in the witness's own knowledge
Category 6B – statement in category 6 containing passages verbatim of other witness's statements
Category 7 – GOI narrative response document.
Category 8 – material provided to investigation by Ashish lad

39. It was common ground that the following categories of material were admissible under s.84 of the 2003 Act:

i. **Category 4** – Documentary exhibits - Statements purporting to exhibit documents without those documents appearing and documents not apparently exhibited by any witness.

ii. **Category 5B** – foreign language statements not taken under s.161.

iii. **Category 6** - statements taken other than by way of s.161 – sworn statements made by witnesses in the context of the EDs investigation.

iv. **Category 8** – material provided to investigation by Ashish lad.

40. In terms of the starting point for the consideration of the remaining material, in particular the admissibility of statements made under s.161 of the Indian Criminal Procedure Code, I took as my starting point the recent decision of the Divisional Court in ***Mallya v. Government of India [2020] EWHC 924 (Admin)***. In the appeal, Ms Montgomery sought to rely on the decision in ***Shankaran v India [2014] EWHC 957 (Admin)*** in support of her submissions on the admissibility of s.161 statements. Ms Montgomery advanced those arguments on behalf of NDM seeking to distinguish NDM's case from that of Mr Mallya. The Divisional Court determined that s.161 statements meet the s.84 Extradition Act 2003 criteria and I considered myself bound by that decision. I did make clear that I would have regard to paragraph 48 of the judgment, namely that s.161 statements "*dealing with events that their makers*

had not seen were inadmissible in so far as it was sought to rely on them as evidence of matters which their makers did not witness. It follows that they should be given no weight on those matters. However, there is no reason why the points they, (the witnesses) made on the documents could not be taken into account as informed explanation of or commentary on the documents, rather than as evidence of relevant facts".

41. I adopted the approach taken by the Divisional Court in *Mallya*. I found that the section 161 statements were admissible under section 84(2), (3) and (4) of the 2003 Act.

41. Turning therefore to the remaining categories of material:

i. **Category 1** - It was accepted by the GOI that the affidavits of the investigating officers cannot amount to admissible evidence of matters the officers did not witness. However, they are admissible in the prima facie exercise and can be taken into account as informed explanations of or commentary on the documents.

ii. **Category 2** – documentary exhibits attached to the affidavits – there was no challenge to the admissibility of this material.

iii. **Category 3** – statements made under s.161 of the Indian Criminal Procedure Code – in view of the decision of the Divisional Court in *Mallya* these statements are per se admissible pursuant to s.84.

iv. **Category 3B** - statements under s.161 containing passages verbatim of another witness's statements. This is a fraud case involving many witnesses who give evidence of very similar matters. Admissible per se and obviously weight of those statements will be considered alongside the totality of the evidence.

v. **Category 5A** – statements taken from foreign language statements – I accept the GOI's submissions that admissibility is governed by s.84 (4).

vi. **Category 7** - GOI narrative response documents – agreed by the GOI that response documents are not admissible evidence in support of prima facie case but are admissible in terms of informed explanation and commentary.

vii. **Remaining categories, 3A and 6A** containing specific admissibility issues I determined was too broad to provide a ruling that all statements within the category are either admissible or not admissible. The statements may be admissible per se but what weight is attached to that material can only be assessed in considering totality of the evidence. There may be evidence within statements that is admissible in support of a prima facie case and part of a statement which may be inadmissible. I accepted Ms Malcolm's submission that it would be inappropriate at this stage in relation to other categories of evidence to give a ruling which would necessarily apply to all documents within a particular category – that is not amenable to a blanket ruling that such documents are or are not, per se admissible.

Prima Facie case – CBI case

42. The s.161 statement of Dinesh Bhardwaj dated 14.04.2018. Mr Bhardwaj [V1 / p 292-297 & V8 / p 305 – 311] is the PNB Assistant General Manager. His statement provides the following relevant information:
    i. He explains within his statement how the provisions of LOUs operate within the PNB. He explains that the LOUs are issued by the Bank to another overseas bank on the request of a client of the Branch to guarantee the trade credit, also known as Buyers Credit being or to be granted to the same client by the overseas bank. He explains that Buyers Credit is obtained by a client from overseas bank, as they get the funds at competitive rates of interest than the interest prevailing in India.
    ii. He explains that buyers credit is governed by guidelines of the Reserve Bank of India and the Reserve Bank of India has issued circulars with guidance for availing buyers credit and monitoring arrangements for Banks. Internally, the PNB has issued loans and advance Circulars which deal with letters of Undertaking and how they are to be issued.
    iii. He explains that LOUs issued must be recorded on the banks records system.

iv. He confirms that M/s Solar Exports, M/s Stellar Diamond, M/S Diamonds R US and M/s Firestar Diamond International and M/s Firestar International Pvt Ltd all hold accounts with the PNB.

v. He recalls that on the 16th January 2018, Yashwant Joshi a Manager at the Branch spoke to him about requests received for LOUs from M/s Stellar Diamond, M/S Diamond R US and M/s Solar Exports amounting to USD 50583737.43 (IND Rs 323.74 crore). Mr Bhardwaj explains that in October 2017 the Branch had issued 6 LOUs to the firms against 100% cash margin and that Mr Joshi should request a 100% cash margin before proceeding with the applications. Mr Bhardwaj is made aware that 8 other LOUs issued about a year previously to the same firms amounting to IND Rs 280 crore were maturing for payment on 25.01.2018 and they were not entered in the CBS system of the Bank and documents were not available in the Branch.

vi. He identifies that the LOUs have been issued by Golkulnath Shetty who retired from the Bank on 31st May 2017.

vii. He asks Mr Joshi to analyse whether further LOUs had been opened by Mr Shetty without entry onto the banks systems.

viii. Mr Bhardwaj is shown the LOUs and confirms that Mr Shetty had issued the LOUs to overseas banks namely Allahbad Bank Hong Kong, Axis Bank Hong Kong and Bank of India in Antwerp during 2017 up until his retirement on the 31st May 2017. There is a total of 150 LOUs issued to Diamond R US, Solar Export and Stellar Diamond.

ix. He confirms that the bank is not in possession of the required documentation for the LOUs from 2011 onwards, which indicates Mr Shetty had not obtained the required documents from the applicant companies. He states that the LOUs were "unauthorizedly issued by him without any sanctioning limit and without any cash margin and thus the bank was exposed to wrongful loss and it was required to pay the funds to the overseas banks on the maturity dates of each LOU".

x. Mr Bhardwaj explains that thereafter the matter was handled by the Banks Head Office. He attended a meeting on the 26th January 2018 at which Nirav Modi's brother Nehal Modi was present. On the same day Mr Bhardwaj states that he received a call from Nirav Modi trying to speak to one of the managers at the meeting. During the meeting Nehal Modi requested the Bank allow the firms to obtain Buyers' Credit on the strength of the new LOUs and that they

will make efforts to arrange funds to meet the liabilities of the LOUs which would be due to payment on the 25th January 2018. The senior managers at the meeting explained that first the liabilities for the LOUs maturing at the end of the month needed to be paid. Nehal Modi explained he would revert back after speaking to his brother, Nirav Modi.

xi. He was made aware thereafter that the Bank were referring a complaint to the CBI against the Nirav Modi Group of Firms and the accounts would be frozen. The complaint was filed with the CBI on the 29th January 2018.

xii. On 3rd February 2018 all sanction credit facilities were recalled.

xiii. Mr Bhardwaj was present at another meeting on the 8th February 2018 at which Nirav Modi was present. He accepted that they had obtained LOUs from PNB on behalf of M/s Stellar Diamonds, M/s Solar Exports and M/s Diamonds R US but claimed it was a facility available to them for 8 years which the bank had withdrawn abruptly. Mr Bhandwaj states that the Bank confirmed no such facility had been available, the Bank had been cheated and Nirav Modi was asked to produce documents / sanction orders of the Bank.

43. In relation to documentation which should have been retained by Mr Shetty it is noted that the s.161 statement of Ravindra Hindelkar date 18th April 2018 March provides some explanation [V1 / p.399 – 424]. He was employed by Firestar International Pvt Ltd who reported to Subhash Parab an employee of Nirav Modi. He was instructed to visit the PNB bank with documents pertaining to the LOUs and hand them over to Gokulnath Shetty. *" Gokulnath Shetty use to receive the original set and used to give an acknowledge copy (office copy) to me. Later after 4 – 7 days, Sh Subash Parab used to instruct me to take the banks original set of documents from Gokulnath Shetty and bring the same to Diamonds R US Office where I used to hand them over this copy to Sh Rahul Sisodiya, who will then file in our office records. I further state than when I asked Gokulnath Shetty as to why he was handing over the Banks' original set back to me, he answered that Sh Subash Parab knows about it and I need not worry about the same".* Of note in his first statement dated 14th March 2018, Ravindra Hindelkar was instructed to shift documents relating to the three Nirav Modi firms to a firm of lawyers, CAM, Cyril Amarchand Mandaldas. There were 50 cartons of documents. He describes them all as original documents.

44. The s.161 statement of Rajendra Keshri dated 17.03.2018 [v8/ p. 312 – 474 and v 12/ p 3-4] Mr Keshri is the Chief Manager PNB Brady House Branch. In considering the Bank records, Mr Keshri confirms that the LOUs were not recorded appropriately within the bank's system and cash margins were not obtained against the LOUs. He gives explanations within his statement dated 20th April 2018 that in relation to the eight LOUs/ Buyers credit funds relating to the initial complaint to the CBI on 29th January 2018, "the entire funds were used for settling the liabilities of earlier Buyers Credit and not for payment to the overseas suppliers".

45. The s.161 statement of Sreekumar Menon dated 20.03.2018 [v 1 / p. 316 – 325] sets out the process for obtaining LOUs and how LOUs should operate. Mr Menon is the Chief Manager of the Punjab National Bank, International Banking Branch. In summary his statement confirms that Buyers Credit is raised by an importer in India from a foreign based bank for making payment to the foreign based supplier / exporter for the import by the Indian importer. The foreign bank requires a Bank Guarantee from the importer's Bank, for extending buyers credit and the guarantee is given in the form of an LOU by the PNB, assuring the foreign bank of payment of the amount along with interest on the due date. The importer in India submits the application for issuing an LOU along with the required documents ("quote of foreign bank, agreement, bills of lading / airway bills, bill of entry, invoices, packing list etc") and the details of the proposed import to PNB. After processing the application, the Branch Head of PNB approves an LOU by the bank on behalf of the importer, if the importer has sufficient credit limit with the bank. However, if the bank has not sanctioned a sufficient credit limit to the importer, the importer has to provide PNB 110% of the LOU amount as a cash margin. The competent authority for the sanction of the LOU is the Branch Head of PNB. Once an LOU is sanctioned by the Branch Head, the officials in Forex Department of the Branch send a message through the "SWIFT Message" system to the concerned foreign bank. At the same time an entry is made in the CBS system of the PNB and a commission is charged to the importer for the issuing of the LOU. On the basis of the SWIFT message received from PNB, the foreign bank releases the amount of buyer's credit to allow payment to be made to the foreign based supplier / exporter. The buyer's credit is to be repaid to the foreign bank along with interest on a specified date. On the due date, if the importer fails to pay the amount, then PNB has to make the payment to the relevant foreign bank. In relation to how much commission was required to be collected by the bank for the issuance of

the 150 LOUs and whether the Branch has collected the commission in respect of those LOUs, he explains IND Rs 237.12 crore was required to be charged but only IND Rs 7.76 crores was charged.

46. The s.161 statement of Rajesh Sinha dated 20th April 2018 [v 1/ p. 326 – 335] . He is a Chief Manager at PNB, and was part of the investigation team to ascertain how many LOUs had been issued at the PNB branch which had not been entered in the Core Banking Solution (CBS) system resulting in the non-creation of liabilities against the Nirav Modi Group. Following the investigation, it revealed that during the period 2011 to 2017 a total of 1208 LOUs had been issued on behalf of the Nirav Modi Group which were not entered in the CBS system. Following the investigation he stated that "we came to the conclusion the bank had suffered wrongful loss of IND Rs 6498.18 crore on account of the 150 outstanding LOUs which were fraudulently issued from MCB, Brady House Branch without entering in the CBS system in the year 2017".

47. The s.161 statement of Supriya Sakhare dated 17th April 2017 [v 1 / p.336 – 343]. She worked in the Foreign Exchange department of the Brady House Branch of the PNB. She explains that after Mr Shetty retired from the Branch on 31st May 2017, she was assigned a portfolio of imports which included sending SWIFT messages under to supervision of Yashwant Joshi. She was advised by Mr Joshi that M/s Diamonds R US, Solar Exports and Stellar Diamonds belonged to Firestar Group of Nirav Modi and the branch also managed the accounts of M/s Firestar International Pvt Ltd and M/S Firestar Diamond International Pvt Ltd. She explains that under instruction of Mr Joshi she issued 6 LOUs to Stellar Diamond, Diamond R US and Solar Exports from October to November 2017. She explained she had difficulty entering them onto the CBS system until 11th January 2018. She explains that she was not told by Mr Joshi that the firms were not having any sanctioned limit for LOUs. In relation to the first LOU she states a proposal note was put before Shri Bhardwaj by Yashwant Joshi which was approved and a 100% margin was to be taken. However, the remaining five LOUs were not sanction by Shri Bhardwaj. In December 2017 she was told by Mr Joshi that he had met with Nirav Modi and Vipul Ambani of Firestar Group and during the meeting he had been requested to continue opening LOUs on behalf of the three firms without entering them onto the CBS system as was being done earlier by Mr Shetty and the bank should not ask for 100% margin. As a result of hearing this she was worried about the 6 LOUs she had not been able to enter onto the CBS system. She

confirms that checks of the bank records in relation to LOUs issued to M/s Diamond R US, M/S Stellar Diamond and M/s Solar Exports that many had not been entered as liabilities on the CBS system "which is a must as only then the branch can monitor liability".

48. The s.161 statement of Jasmine Makwana dated 17th April 2017 [v1 / p.344-351]. She also worked in the foreign exchange department. She also confirms that she was told that M/s Diamond R US, Solar Exports and Stellar Diamonds belong to Firestar International Pvt. Ltd and M/S Firestar Diamond International Pvt. Ltd and she was introduced to some employees of Firestar and meet with Mr Joshi. She confirms that in October and November 2017, 6 LOUs were opened by Ms Sakhare on behalf of the companies with 100% margin, but that was taken after the LOUs were issued. The LOUs were entered onto the CBS system on 11th January 2018 after earlier attempts were unsuccessful due to system errors. She also confirms that checks on the Bank records in relation to LOUs granted to the three companies for the period 2012 – 2017 were not entered on the liability register through CBS system

49. The s.161 statement of Rajesh Kumar Sinha dated 20th April 2018. He is the Chief Manager in PNB Audit Office. He was assigned to the Bank's investigation into how many LOUs had been issued at the Brady House Branch which had not been entered in the CBS resulting in non-creation of liabilities and losses to the Bank. They looked at the banks records from 2011 – 2017. They confirms 1314 LOUs were issued to Nirav Modi's firms of M/s Stellar Diamond, M/s Solar Exports and M/s Diamond R US. More specifically, in 2017 150 LOUs were issued without entry onto the CBS system. He also confirms that during the investigation they discovered that "no fund based or non-fund based facility was granted by MCB, Brady House Branch to these 3 firms of Nirav Modi Group who were maintaining only current accounts in the said Branch". He states that if LOU facility is not sanctioned to a customer no LOU would be opened on request unless 110% cash margin and then only with approval. He finally states that the 150 LOUs issued without entry onto the CBS system in 2017 resulted in losses of IND Rs 6498.18 crore.

50. The s.161 statement of Sreekumar Menon dated 8th August 2019, He sets out the results of the investigation leading to the discovery that between February 2017 to May 2017 150 LOUs had been issued by Mr Shetty and other officers of Foreign Exchange

Department of MCB Brady House, Mumbai Branch on behalf of the three firms without entry onto the CBS system against which the firms had obtained Buyers Credit from overseas Banks. It was also revealed that Mr Shetty had "increased the maturity date of said LOUs for more than 350 days to grant undue pecuniary advantage to the said 3 firms and their partners and created liability on the Bank amounting to IND Rs 6498.20". He also confirms "the said 3 firms did not arrange the required funds in their accounts to re-pay the liabilities to the 3 overseas banks".

51. On the 22nd January 2018, the PNB wrote to each of the three companies in response to their request for issuance of buyer's credit. The letters to the companies explain *"in the absence of any sanctioned facility in your favour, you are requested to provide us the copy of the sanction, if any, available with you, as stated in your request. Meanwhile please arrange for cash collateral to the tune of at least 100% to enable us to look into your request"*. [v9 / p. 970 – 972]

52. The relevant extracts of the statements of accounts of M/S Stellar Diamonds, M/s Solar Express and M/s Diamonds R US are exhibited [v 9/ p. 904-942] and demonstrate that while obtaining LOUs from PNB, the firms had insufficient credit balance to provide the requisite cash margins and security.

53. The notes of the meeting attended by Mr Bhardwaj and Nirav Modi on the 8th February 2018 are exhibited [V 9 / p. 1870]. Nirav Modi accepted the issuance of the LOUs to m/s Stellar Diamond, M/s Solar Exports and M/s Diamond R US, contending that it was a facility available to them for at least 8 years and the Bank withdraw the facility abruptly. PNB confirmed there were no approval or facility sanctioned by PNB and requested Nirav Modi to share copies of any such approvals.

54. The three firms alleged to perpetrate the fraud upon PNB are M/s Diamond R US, M/s Stellar Diamond and M/s Solar Exports. The GOI rely on the following evidence to demonstrate the Nirav Modi was in fact in direct control of these companies:

    i. The charter documents for the companies were signed by Nirav Modi [see references in GOI closing submissions on prima face case for extensive references to the evidence in the bundles]

ii. Balance sheets and indenture of partnership of the three firms submitted to the PNB for the opening of the current accounts were signed by Nirav Modi.

iii. The statement of Mr Raghu Kothari dated 13th October 2018 confirms from the Diamonds R US bank accounts that Nirav Modi withdrew IND Rs 848 Crore to his personal accounts.

iv. In emails send by Nirav Modi on February 5th, 2018 to the Bank, Nirav Modi refers to the companies as "affiliated with me" He goes on to state that his ownership interests are limited to 5% [v E / Tab 13 & 18] However, in subsequent emails, it is apparent that he refers to the companies generically as the "Nirav Modi" group and in correspondence with PNB has continued to express his willingness and responsibility to resolve the issues and liabilities relating to the three companies. An email dated 15th February 2028 he offered to place his flagship company "Firestar International Ltd" under the banks charge and to sell its shares and assets as repayment [v 9/ p. 1876 – 1877 and 1866 – 1887]

v. Examples of statements of dummy directors appointed to the three firms. Oghadbhai Kalsaria in a statement dated 19th March 2018 [v8 / p. 286 – 290], a farmer is approached together with 5 others to be paid modest amounts to sign documents as partners of the three firms and were given majority shareholdings. His statement also confirms that he was illiterate and was not aware of the consequences of signing cheques, partnerships documents or account opening forms. The indenture of partnership was executed by Nirav Modi.

55. In terms of what the companies did with the buyers credit, it is clear from the s.161 statement from Srekumar Menon dated 20.03.2018 the permissible purpose for buyer's credit is to facilitate genuine import transactions into India. Buyer's credit must be used for the import of goods. An LOU cannot be used to re-pay the liability of an earlier LOU. The exhibited PNB Circular No 131/2009 dated 19th October 2009 regarding issuance of letters is exhibited. [v 9/ p. 1342]. The s.161 Statement of Shri Keshri dated 20th April 2018 provides some detailed analysis of how the LOUs obtained by Nirav Modi's firms were used to re-pay liabilities in relation to buyer's credit obtained by the firms in 2016 and 2017 as opposed for genuine import transactions. The statement also confirms these were authorised by Gokulnath Shetty.

56. The s.161 statement of Satyendra Shukla dated 7th August 2018 [v 9 / p. 950- 966] explains that he worked for one of the Firestar International Pvt Ltd group of companies managed by Nirav Modi's brother, Neshal Modi. In December 2009 he was asked by Nishal Modi to work in the office of the company in Hong Kong or Dubai and he went to work for M/s Firestar Diamond FZE in Dubai as general manager. After moving to Dubai he recalls Hemel Shah, Hiren Tallor, Hresh Shah, Abhijeet Pawar and Jurian Matthews joining the company. He was responsible for visa processing. He describes that for other Dubai based companies, Mihir Bhansali appointed a consultancy firm to undertake visa processing. The group also had a company in Hong Kong in the name of m/s Firestar Diamond Ltd controlled by a friend of Nirav Modi's brother. Initially Firestar Diamond FZE imported cut and polished diamonds from Hong Kong and also local purchases from UAE. They would sell the diamonds to local market as well as export to Hong Kong. He was directed by Sandeep Mistry who used to consult Mr Bhansali and Nirav Modi about any transactions. He worked for the company until 2013 before returning to India as instructed by Mihir Bhansali in order to set up a diamond cutting and polishing unit in Surat. In 2014 he was asked again by Mihir Bhansali to go back to Dubai and set up a jewelry manufacturing unit in Dubai for M/s Firestar Diamond FZE. He did this before returning to India. He explains that Mihr Bhansali is Nirav Modi's cousin and he monitored all the jewelry operations of the Firestar group. Once again in 2016 he was asked by Mihir Bhansali to return to Dubai and join Firestar Diamond & Jewelry as general manager. However, Mr Shukla explains that in relation to other Dubai based companies of the Firestar Group he states they were "dummy companies which were set up by Nirav Modi in Dubai" through the same consultancy company appointed by Mihir Bhansali. He states "*In these companies, there was no real business. Transactions were done just for the movement of funds as desired by Nirav Modi. Some of these companies are having branches also in UAE*". He lists the companies operating from Dubai. He also states that other employees of Firestar Group in India were also moved to Dubai, including Sandeep Mistry, Shallesh Mehta and Netajl Mohite. Their visas showed them as employees of the dummy companies and in fact as directors and shareholders of the dummy companies.

57. Satyendra Shukla provided a second s.161 statement dated 8th August 2018. In this statement he explains that Mihir Bhansali had asked him to become manager in a similar complex structure of companies formed under the instruction of Mihir

Bhansali and Nirav Modi. Gradually Nirav Modi, Nehal Modi and Mihir Bjhansall, so that by the end of 2013, the managers / owners of the companies were most ex-employees of Firestar Group. He describes the rotation of pearls and pearl jewelry between the companies. Communication regarding the functioning of the dummy companies was done on 'panemail' or 'cricket'. He also describes a similar set up of companies in Hong Kong formed by Nirav Modi, which operated in a similar manner to the Dubai based companies.

58. He explains after the investigation against Nirav Modi started, he and the other dummy directors decided to leave Dubai and return to India but Mihir Bhansali asked them all to wait as if they returned to India the government agencies may arrest them. Mihir Bhansalli left for the US and instructed them not to contact him. Nehal Modi took the mobile phones off all the dummy directors and destroyed them. Although Mr Sukra was not involved in the financial matters of these companies, he worked with the other directors and *"came to know that huge funds were transferred to Nirav Modi and Deepak Modi"*.

59. Further statements from the dummy directors of Hong Kong based company who were part of the Firestar Group are provided by Nilesh Khetani in his s.161 statement dated 19th July 2018 [v 11 / p. 188-197]. He states there were no genuine business transactions in the companies and the companies were being used for transferring funds generated "in the guise of sale – purchase / export – import of goods" he described the companies being controlled by Nirav Modi and Mihir Bhansali. He corroborates the setup of the companies in Dubai. He also explains that after the registration of the case by the CBI, Nehal Modi the younger brother of Nirav Modi took overall control of the affairs of the various companies. He was advised to leave Hong Kong for Cairo and their cell phones were destroyed.

60. The s.161 statement of Nilesh Mistry dated 20th August 2018 [v 11 / p. 206 – 210] is a junior account officer who handled accounting and maintained the sale/purchase transaction entries pertaining to import/export/local sale carried out within the group of companies based in Mumbai, Surat, Dubai and Hong Kong. He made accounting entries pertaining to local purchase as well as import/export of goods (diamonds / jewelry) within M/s Firestar Diamond International Pvt Ttd, Mumbai, M/s Neeshal Merchandising Pvt. Ltd, M/s Firestar Diamond Inc, M/s Brilliant Diamond ltd, Hong

Kong, M/s Eternal Diamond Co Ltd, Hong Kong, M/s Ajafee Inc, USA and M/s Fantasy Diamond Inc, Mumbai. He states all these companies were owed by Nirav Modi and his family members. He describes the account entries as "round tripping nature" between the dummy companies. He came across transactions where "round tripping funds" were transferred into personal accounts of Pruvi Modi, Nirav Modi's sister. He also described how "round tripped funds" were also siphoned off within the Dubai based companies to Purvi Modi's personal account. In March April 2018 when the CBI investigation commenced, he states he was instructed by Mandeep Mistry and Mihir Bhansali to withdraw money from the Dubai based group accounts of which he and others were namesake directors. This was handed to Sandeep Mistry. He also describes being threatened by Mihir Bhansali and Nehal Modi to go to Cairo. He questioned the round tripping transactions and was told by the Finance Manager *"I don't have to worry about these round tripping transactions"*. He was told the Mumbai based Finance Team of FIPL/FDIPL companies were arranging loans from Punjab National Bank. Albeit hearsay, that fact is not actually in dispute.

61. Further corroborative evidence is found in the statements taken as part of the ED case.

62. Statement of Ashish Bagaria [v 6(ii) / p. 137-147]. In June 2009 Mr Bagaria joined Firestone International as a data entry operator. In January 2011, he was transferred to Hong Kong. He was asked to sign some papers by Afditya Nanavati and it was explained he had become a director of Eternal Diamonds Corporation Limited. He was told that this was necessary as Purvi Modi was the owner of the company but she could not manage the affairs of the company as she was frequently travelling. He was also required to open a bank account. He confirms he never had any decision-making authority within the company. Having returned to Mumbai he was asked to return to Hong Kong in 2015 by Sandeep Mistry and Mihir Bhansali. He was tasked with "Diamond, Jewelry and Pearl Shipment" of six Hong Kong based companies including the company he was a director of. He also explains the companies were dummy companies used to import diamonds, effect sales between dummy companies before diamonds were exported again. He states each of the companies was in essence controlled by Nirav Modi. In March 2018 after the CBI investigation was launched, he explains Nehal Modi came to Hong Kong and informed the directors that the companies must be liquidated and they were to destroy their mobile phones. He was also placed under pressure to travel to Cairo but Mr Bagaria refused.

63. Ashish Lad provides a number of statements [v 11 / p. 127 – 176 & v 6(ii)] He joined Firestar Diamond Ltd in 2007 and worked in the accounts department. In 2012 he was transferred to the Dubai office. His role was to enter sales and purchase information into accounting software in relation to Eternal Diamond Corporation Ltd, Brilliant Diamonds Ltd, Tricolour Gems and World Diamonds Distribution. In 2013 he was summonsed to Surat office of Firestar International. He was told he was required to become the owner of a Hong Kong based company named Sunshine Gems Limited. He was required to travel to Hong Kong to open a bank account. He was also asked to become owner of a further Hong Kong Company Unity Trading *[this is also corroborated in the statement made by Satyendra Shukla above, who details Ashish Lad as owner of this dummy company]*. In both companies, Mr Lad confirms he had no decision-making authority. He also, like Satyendra Shulka, provides details of other similar companies which were opened with no employees other than nominal director / owners. There was no legitimate trade by the companies. He confirms that Nirav Modi was the beneficial owner and controller of the Dubai and Hong Kong based companies. He also explains that in March 2018, Mihir Bhansali visited the directors in Dubai and warned them that if they go to India they will be arrested. They are told that if they co-operate they will be provided shelter and legal help. Mr Bhansali warned them if they returned to India the company will not help. Nehal Modi told them Dubai was not safe and they agreed to go to Cairo.

64. Ms Montgomery and Mr Watson have made extensive submissions as to the alternative narrative of what occurred. In their submissions the only realistic possibility is that PNB's lending was the result of ordinary commercial arrangements entered into openly, and therefore without deception, and that is the most realistic probability on the evidence. They submit there is no evidence anyone was misled. The evidence is overwhelmingly that anyone at the PNB who needed to know of the LOU arrangements between the bank and 3Ps did. PNB was very well aware, at the highest levels, of the arrangements. They submit the CBI case is an exercise in reverse engineering – taking as its starting point that there was fraud and then looking to find it. They submit the GOI have failed to consider the wider commercial context of the lending, its actual origins, the absence of any pattern of deception or secrecy or financial gain and the absence of any evidence that any funds derived from those arrangements were wrongly obtained by NDM.

65. Nirav Modi submits the PNB had provided the 3P partnership with a long established and largely unsecured LOU credit facility. It was operated in plain sight with on-going repayments and further borrowing. The defence identify the 6 OUs previously authorized by Jasmine Makwana and Dinesh Bhardwaj without a 100% margin being taken when the LOUs were issued. They also point to other LOUs being repaid when they fell due. When further buyer's credit was sought on the 16th January 2018 and 100% margin was insisted upon, it is submitted that the 3Ps replied by letter to Mr Bhardwaj stating *"As explained to you, this is per the revolving buyers credit facility we have been enjoying with your bank for the last several years. Each amount has been paid through your bank to suppliers and each amount due has been repaid by us over all these years. Kindly do not delay in issue of the LOUs as this will result in cash crunch, buyer default in case of the nature of contract work done by us for them and [in] turn default in repayment of the buyer's credit extended in February 2017"* [v E(2) / Tab 7]

66. Ms Mongomery and Mr Watson submit that the PNB bankers were then negotiating with 3P since 22nd January 2018 and met with Nehal Modi on 25th January 2018. Negotiations continued including further correspondence between Nirav Modi and the PNB, including on the 13th February 2018 an email to PNB's Managing Director Sunil Mehta, making further proposals for a structured repayment process *"My intent is to honour all the obligations on my part, Firestar's part and whatever the firms are liable to pay, while reserving our rights regarding your action"*. [v E(2)/ Tab 25] There were ongoing negotiations and attempts at finding a compromise solution up until 15th February 2018 when Nirav Modi emailed the PNB and the broader consortium of Firestar lenders *"My intent is to cooperate fully with PNB and the consortium of banks, and sincerely request that value in FIPL [Firestar International Private Limited] is not destroyed. FIPL has 2400 employees and has over the years built excellent relationships with suppliers and customers around the world….I once again request you obtain the repayment of your dues through a combination of the receipts from the three firms buyers and sale of FIPL / its assets and keep FIPL's business intact until then"* [v e(2) / Tab 25].Therefore it is submitted that although PNB filed its criminal complaint regarding the 150 fraudulent LOUs on the 13th February 2018 the Bank was already looking to negotiate a solution to what was in reality a commercial dispute initiated by the PNB refusal to issue LOU on the

same terms as it had before. The finance facility had been running for many years, signed off by numerous employees in the bank with repayments made on time by the 3P. It was only when PNB simultaneously changed the terms of the lending and placed pressure on the other banks who had provided facilities to the wider group to withdraw lending and informed the CBO it had been a victim of fraud, the PNB created an immediate cash crisis for Firestar. As a result, Firestar International Ltd, Firestar Diamond International Limited and the 3P ceased to be going concerns.

67. Although Nirav Modi has not given evidence at the extradition hearing, I received evidence from Thierry Fritsch [v D / Tab 2] , who had worked for Nirav Modi for many years and spoke passionately about Nirav Modi as an entrepreneur and an artist. His evidence in my assessment does not assist me in relation to whether a prima face case has been disclosed.

68. I also received live evidence from Dr Richard Taylor [v C] an expert within the jewelry industry. His evidence was in essence to rebut the GOI's evidence concerning the Hong Kong and Dubai based companies and the suggestion that they were related parties and simply involved in the circular rotation of goods to give the impression of trade. Dr Taylor describes the circular rotation of stock is in fact relatively common practice within the jewelry industry for compelling commercial reasons, in order to ensure stock which is not selling can be refashioned to improve salability or release capital when a company is suffering liquidity problems.

Conclusions on prima facie case for CBI request.

69. As Ms Malcolm and Mr Hearn submit, the GOI must establish that Nirav Modi:
    i. Formed or was party to an agreement
    ii. To defraud PNB by
    iii. Dishonestly causing/ permitting the issue of LOUs
    iv. By one or more of the indicated means
    v. Causing loss/risk of loss to PNB.

70. I have considered the case of Shillam [2013] EWCA Crim 160 at [19] *"The evidence may prove the existence of a conspiracy of narrower scope and involving fewer people than the prosecution originally alleged, in which case it is not intrinsically*

wrong for the jury to return a guilty verdict accordingly but it is always necessary that for two or more persons to be convicted of a single conspiracy each of them must be proved to have shared a common purpose or design".

71. Based on the evidence set out above I make the following findings;

i. The LOUs which are the subject of the CBI case were issued to NDM's firms by Gokulnath Shetty, who is alleged as a co-conspirator with NDM. Mr Shetty retired on the 31st May 2017 shortly after the relevant LOUs were issued.

ii. The LOUs had been issued in the same manner as LOUs issued to NDM's firms between 2011 – 2017, without appropriate cash margins and without being recorded on the bank's systems.

iii. I find that it was necessary for the LOUs to be entered onto the CBS system so that the bank's contingent liability could be tracked. I find the only reasonable explanation for the transactions not being entered onto the CBS system is so that the PNB were misled and the fraud would not be detected. This inference is also supported by Supriya Sakhare's evidence.

iv. The submission that the PNB had provided the companies with a long established and largely unsecured LOU credit facility operated in an ordinary way and in plain sight is not supported by the evidence that the LOUs were not entered on the bank's CBS system. Submissions that between 17th October and 13th November 2017 six LOUs had been issued to the companies approved by senior managers in circumstances where 100% margin had not been taken or entered on the LOUs is not supported by Mr Bhardwaj's statements or those of other bank officials highlighted above. Mr Bhardwaj confirms the cash margins were obtained. They had been issued by Yashwant Joshi a co-conspirator and were explicitly excluded from the CBI case. Supriya Sakhare confirms that details of those LOUs were entered onto the CBS system eventually due to software issues. Mr Bhardwaj's evidence confirms Mr Shetty had failed to retain documents lodged by the firms in support of the LOUs. Those documents had been returned by Mr Shetty to the NDM Firms as confirmed by Mr Hindlekar.

v. At the time the LOUs were issued, the firms did not have sufficient credit to provide requisite cash margins. The NDM firms had current accounts and did not enjoy any credit facility for issuance of LOUs.

vi. The LOUs were issued in direct contravention of the PNBs Circular No 131/2009 dated 19th October 2009 by Mr Shetty. Albeit it is submitted the LOUs were sanctioned by PNB heads of Branch. Some of those heads of Branch remain under investigation. Albeit it is submitted on behalf of NDM that Mr Bhardwaj approved the issuance of the LOUs, that is not supported by the evidence of Supriya Sakhare.

vii. There are clear links between NDM, Nehal Modi, Mihir Bhansali Gokulnath Shetty and Yashwant Joshi, named as some of the co-conspirators. To some extent, NDM's links with officials at the Banks is corroborated by the conversation Supriya Sakhare had with Yashwant Joshi. In that conversation, Mr Joshi told her he had been asked to continue opening LOUs without entering them on the CBS system as was being done earlier by Gokulnath Shetty and she was told the bank should not ask for 100% margin. Albeit what was relayed in the conversation may be inadmissible hearsay, the evidence of the conversation itself is admissible to demonstrate the links between NDM and officials at the Bank, as well as the instruction she received not to ask for 100% margin. There is also the evidence from Ravindra Hindelkar supporting how Mr Shetty sent original documents, which should have been retained at the Bank back to Firestar offices under the direction of Subhash Parab who reported to NDM.

viii. When NDM's firms approached PNB in January 2018 requesting fresh LOUs, when challenged by the Bank regarding the absence of any sanctioned facility in the firms' favour, the NDM firms could not provide any evidence of any sanctioned facility with PNB. On 25th January 2018 the NDM firms replied to PNB indicating that in the absence of fresh buyers credit being issued they would default on repayment of the buyers credit extended to them by PNB in February 2017. The evidence of communications between NDM and PNB suggesting that this demonstrates a longstanding awareness by the Bank that LOUs had been long provided to the firms without cash margins were sent subsequent to PNBs refusals to issue further LOUs. I agree with the submission made by Ms Malcolm and Mr Hearn that it is a reasonable inference that these communications were a post facto attempt to legitimise what had occurred. I balance that against the fact no evidence has ever been adduced demonstrating the NDM firms had a sanctioned facility with PNB, something which was specifically requested by the Bank in January 2018.

ix. PNB filed a complaint with the CBI on 29th January 2018 and 13th February 2018.

x. On 5th February 2018 Nirav Modi personally wrote to the PNB accepting the fact of the debt and taking responsibility for the outstanding borrowing. The argument that the borrowing was known about, tolerated or sanctioned by PNB is inherently implausible in view of the amount of unsecured debt INRs 6498 crores (equivalent to £729m) obtained by the three firms. In any event, that is disputed in the evidence from the Bank officials.

xi. PNB officials unraveled a "Ponzi-like" structure where LOUs were used to repay earlier ones.

xii. Following the reporting by the Bank to the CBI, concerted attempts were made to prevent dummy directors of companies controlled by NDM in Dubai and Hong Kong co-operating with investigators.

xiii. The CBI investigation demonstrates that NDM had retained control of the Nirav Modi Firms but had sought to disguise the control of the firms through the use of dummy partners recruited at his behest in order to sustain the LOU scheme. This was despite the email from Nirav Modi to the PNB stating his ownership in the entitles was less than 5% but he saw it as his "moral responsibility to arrive at an amicable solution".

xiv. I do not accept the submissions that NDM was involved in legitimate business and using the LOUs in a permissible fashion. It would not be in PNBs interests to create such enormous financial exposure through a financial product which the evidence from the Bank officials confirms is not designed for general business lending, I find there is no evidence of genuine import transactions and the applications for the LOUs was being done dishonestly. The statement of Rajendra Keshri is supportive of the fact the LOUs obtained by NDM's firms were used to re-pay liabilities in relation to buyer's credit obtained from earlier LOUs. Suggestion that buyers credit obtained by the Nirav Modi Firms was required for making payment for genuine imports from suppliers mentioned in the LOUs is not born out by statements from the dummy directors in the Hong Kong and Cairo based companies. Their evidence is that these companies were not genuine suppliers and were shadow companies controlled by NDM through several employees who were represented as directors of the companies. NDM's firms' business transactions were primarily with these dummy companies. The statements demonstrate that the circulation of pearls,

diamonds and gold between the NDM firms and the Dubai and Hong Kong based companies was not genuine business and the companies were being used for transferring funds generated "in the guise of sale – purchase / export – import of goods" colloquially referred to as "round tripping transactions". Again, there no evidence demonstrating that the NDM firms had any sanctioned facility with PNB.

xv. The fact NDM and his associates were aware of the risks presented by the dummy directors if they were to be spoken to by the authorities after the CBI investigation opened can be the only explanation for efforts which were made to ensure they were kept away from India.

xvi. The evidence referred to at paragraph 54 above demonstrates that NDM was in direct control of the three Nirav Modi firms.

xvii. Although there may be no direct evidence of NDM entering into an agreement with Bank officials and his other alleged conspirators, the evidence of the links between Nirav Modi, Nehal Modi, Mihir Bhansali, Gokulnath Shetty and Yashwant Joshi alone combined with my other findings above, in particular the lack of evidence of any sanctioned limit agreed with the Bank; the manner in which the LOUs were obtained and concealed, the manner to which the LOUs was used, the actions of NDM, his brother and Mr Bhansali after the CBI investigation opened cumulatively and progressively eliminate the alternative narrative put forward on NDMs behalf. The combination of the evidence taken as a whole create an inevitable conclusion NDM, his brother, Mr Shetty, Mr Bhansali and Mr Joshi Jie Zhang, were operating together dishonestly with other associates and banking officials to defraud the PNB.

xviii. The loss to the Bank is evidenced in the statements from the Banking officials.

72. I remind myself that this Court does not have to exclude all of NDM's alternative narrative and possibilities or his personal interpretations of the evidence. Many of which will be matters for the trial in India and not relevant to the ultimate task for this Court on these requests. Pulling all these findings together, I determine, on one possible view of the evidence, I am satisfied that there is evidence upon which NDM could be convicted in relation the conspiracy to defraud the PNB. A prima face case is established.

Prima Facie case – ED case

73. As Ms Mongomery and Mr Watson concede in their final written submissions, the ED case of money laundering is parasitic on whether prima facie case of conspiracy to defraud has been made out. If it has not, then there is no predicate offence on which to find any allegation of money laundering. If a prima facie case is made out on the conspiracy to defraud, then Ms Mongomery and Mr Watson accept that there will necessarily be a prima facie case of money laundering. Having found a prima facie case on the conspiracy, for the sake of brevity, I am not going to embark on setting out the full evidence relied on within the ED request and my evaluation thereof. It is a point conceded by those representing NDM and I find there is prima facie case of money laundering.

Prima Face case – Supplementary CBI Request

74. The GOI must establish that NDM:
    i. Formed or was party of an agreement
    ii. To commit acts
    iii. Tending and intending to pervert the course of justice
    iv. By one or more of the indicated means

75. The s.161 statement of Anand Mohan [v 11 / p.106-111] dated 9th March 2018. He is employed as an associate at the firm of laws Cryril Amarchand Manglada (CAM). On the 14th February 201, being aware that the ED and the CBI were undertaking searches of various premises of Nirav Modi group. He was aware that the three firms were Diamonds R US, Stellar Diamond and Solar Exports. He was asked by a colleague Ms Shaneen Parikh to liaise with Mr Miten Pandya so that documents relating to Nirav Modi's firms could be delivered to the CAM offices. He was asked specifically to confirm with Mr Pandya that they would not accept any original documents. He confirms that Mr Pandya works with NDM. The documents were delivered to the lawyer's office on the evening of 14th February 2018. It was confirmed by Mr Pandya that only copy documents had been brought. Scanning of the documents was undertaken and Ms Shanneen Parikh instructed him to contact Mr Pandya to have all the papers taken back but Mr Pandya never contacted him to arrange. He goes on to say that the documents were then seized from CAMs offices on 20th & 21st February

2018 and he subsequently learnt that they contained original documents from the three firms .His further statements dated 17th July 2019 explains during the scanning process he asked Mr Pandya why they had brought original documents and he was told that "*Nehal Modi and Vipul Ambani had told him that all documents which were lying in their office should be shifted to the office of Cyril Amarchand Mangaldas and he had brought all the documents of Firestar Group which were given to him by Nehal Modi and Vipul Ambani".*

76. The search lists exhibited in the request set out details of the documents seized from the offices of CAM (V 11 (ii) pages 112 – 121) . These include original applications for LOU, airway bills, bills of entry, copies of SWIFT messages. All documents relating to the Nirav Modi Firms. In addition, the Production Cum Seizure Memo at pages 122 – 123) include rubber stamps relating to companies controlled by Nirav Modi, all seized from the CAM office by the CBI.

77. On the 29th May 2018, Ms Shannen Parikh of CAM emails Nirav Modi. The email is exhibited at Annex D of the Supplementary Request, is terminating the services to NDM by the firm of lawyers. Within the email she states:

> *" ....we are still reeling under the trauma that come upon us consequent to your treacherous conduct of saddling us with boxes of several original papers contrary to the express instructions to your representative to only send copies of relevant documents for conducting the legal and forensic analysis that we were engaged to do. Further, to our shock and surprise we later discovered that the boxes also had rubber stamps, seals and blank letter heads of your various companies, which apart from being highly unusual, was totally irrelevant for our professional work. Your conduct is reprehensible"*

78. In addition, statements have been provided by the dummy directors of the companies were transported from Dubai to Egypt by NDM's associates. I will refer mainly to the s.161 statements from Ashish Lad [referred to above] . He provides further details to those described above in his statements of 27th July 2018 and 10th June 2019 about the "round tripping transactions" used to create turnover for the Firestar Group and how transactions were communicated through a private communications system "panmail" or "crickinfo" within Firestar Group as well as the Dubai and Hong Kong

based companies. He explains that in March 2018 when the CBI investigation started, Mihir Bhansalli instructed all the dummy directors to withdraw money from the Dubai based accounts in which they were shown as namesake directors and handed over to Sandeep Mistry. They were told the cash would be handed over to Nirav Modi's brother Nehal Modi. Thereafter in March 2018, Nehal Modi and Mihir Bhansali instructed them to go to Cairo and threatened them that the police would arrest them if they remained in Dubai. Flights were arranged by Nehal Modi. In the meeting with the dummy directors, Mihir Bhansali told them "*there is a hostile scenario in India right now, and if we go to India, we will be arrested by the investigating agencies. He also told us that if we co-operate with them, they will provide shelter and legal help"*. They were told by Mihir Bhansali he was conveying the instructions of NDM in terms of the sale / purchase transactions by Dubai based firms with the Nirav Modi firms, but they were requested "*Not to disclose his name before any authority"*. He also explains that Nehal Modi also came to Dubai and took their mobile phones back and issued new ones.

79. Ashish Lad also explains that *"There was a server in the office of World Diamond Distribution FZE in which all the data related to accounting and operations in respect of all the companies of Nirav Modi in Dubai was stored. The server was connected to all the branch/ head offices of the supplier dummy companies of Nirav Modi. As I recollect, somewhere at the end of March or April 2018, the office premises of World Diamond Distribution FZE situated in Dafza was vacated and returned to the authority. Similarly, the other Branch / Head Offices of certain dummy companies were also vacated and returned to the respective authorities. Prior to vacating the office of World Diamond Distribution FZE, the server was also removed. As per my knowledge, Shri Nehal Modi handed over the server hard disc to the firm of Pakistani Nationals for destroying the same "*.

80. He goes on to explain that Nehal Modi told him and the other directors in Dubai to leave. In fear, they all agreed to go to Cairo in Egypt. Nehal Modi arranged travel. Ashish Lad, Rushbh Jethwa, Netaji Mohite, Subhash Parab, Sandeep Mistry, Mrs Jyoti Mistry, Meet Mistry Nilesh Mistry, Jinesh Shah, Donu Mehta, Vipin Sanit, Suby George and Shridhar Mayekar were taken to Cairo and Nehal Modi removed their phones again.

81. In addition, I was provided with a video recording of a number of the dummy directors taken in Cairo. (Ashish Lad, Rushabh Jethwa, Shreedhar Mayekar, Sonu Mehta and Nilesh Mistry) This was played in Court and a transcript provided. In summary they each they describe themselves as the namesake owners of the various companies. They describe the fact they were made to sign documents for their own safety and those documents state that the companies in Dubai belonged to them. The documents state that they have been carrying on business with Firestar and NDM and after his financial crises, their businesses faced difficulties and to avoid creditor claims they have all come to Cairo. They say on the video that this is not true, because they were all working for NDM, they are under his control, they are living in fear and that is why they signed the documents, they signed the documents to get their passports back. Their passports were taken from them to get visas. They explain that they are making the video to let everyone know the pressure in which they've signed the documents because they had no other choice. [Annex L (V) of the supplemental request]

82. In addition, the request includes transcripts of audio recordings between Nehal Modi and a number of the dummy directors while they are in Cairo [v 11 (ii) pp 145 – 151, 152 – 159, 163 – 164, 180-181, 183-184. The conversations show how Nehal Modi placed pressure on individuals to make untruthful statements, tell them what to say in statements. In a conversation between Nehal Modi and Ashish Lad, Nehal Modi is instructing Ashish Lad about how he should return to India via Calcutta to evade the authorities. He explains a lawyer will visit him and he will sign documents and make same statements as Divyesh Ghandi. He also tells Ashish Lad he will need to go to Europe to make a statement in return for 20 Lakhs.

83. In another transcribed call with Rushabh Jethwa, Nehal Modi instructs him to make a statement in which he states he travelled to Cairo because he was scared and that he does not work with Nirav Modi.

84. In a further statement dated 11th June 20-19, Ashish Lad explains that in Cairo he was asking Sandeep Mistry to convince Nehal Modi to allow him to return to India. He explains that he received a call on his mobile from a private number which he did not answer. He then received a call from Nehal Modi telling him to answer the number as it was NDM. Ashish Lad explains that he then received a call from NDM. He tried to convince him to stay in Egypt and assured him that he would provide legal help.

Ashish Lad sates he kept asking NDM if he could return to India. He was told by NDM that if he does go to India he will be arrested. Ashish Lad explains to him that he has done all the transactions as per his instructions conveyed by Mihir Bhansali and Sandeep Mistry and he will face the authorities in India. However, at this point Ashish Lad says that Nirav Modi *"started threatening me by using abusive language and also told me that he will get me killed (In Gujarati "marvalakhis") if I do not follow his instructions. He also threatened to implicate me in theft case. I was so scared. I was not expecting such type of response from Nirav Modi. I shared this conversation with Rushub Jethwas and Sridhar Mayekar".*

85. Rushabth Jethway anf Shreedhar Mayekar confirm that Ashish Lad told them of the call from Nirav Modi in their respective statements dated 17th June 2019 and 26th November 2019. [v 11 p.177- 181 & p 182 – 184]

86. Finally, evidence of the threats made by NDM are further set out in the transcripts of audio conversations between Ashish Lad, Sandeep Mistry and Nehal Modi during the course of which Nehal Modi appears to apologise for his brother as he is under "*crazy amount of stress and I am apologizing on his behalf",* before giving his word that Ashish Lad can leave Cairo on the 29th June.

87. In relation to moving the documents to CAMs, Ms Mongomery and Mr Watson submit that at its highest, it is simply the action of taking evidence to a very well-known law firm for it to be scanned and stored electronically. Where there is a formal retainer in place between a client and a reputable law firm and documents are taken to the law firm to be copied pursuant to that retainer, that conduct cannot disclose a criminal offence of perverting the course of justice. The letters of retainer exhibited by the defense show that CAM were engaged as soon as PNB refused to issue further letters of credit, in order to seek to resolve the issues between Nirav Modi's companies and the PNB. On the GOIs own evidence, it is submitted that the documents were taken to CAMs offices and held there for a matter of days for the scanning to be undertaken. However, before they were returned to the companies, the documents were seized by the CBI. The only wrongdoing alleged is the fact there were some original documents. The email from Ms Shannen Parikh on the 29th May 2018 was sent at a time when CAM was having to fend off allegations made against it by the CBI. In summary, Ms Mongomery and Mr Watson submit there is no evidential basis to

support the proposition that in handing over materials to a reputable law firm in order than they could be scanned and stored, any person involved in a conspiracy to pervert the course of justice.

88. In relation to the Cairo allegations, the alleged threat to Ashish Lad and the destruction of the server, the GOIs essential case is that the directors of the Dubai companies were transported involuntarily out of Dubai to Egypt by Nirav Modi and his associates, held against their will and placed under pressure to give false statements to the Indian authorities. However, Ms Mongomery and Mr Watson submit that the reality was somewhat very different. The Directors themselves chose whether or not to travel to Cairo. They went for their own reasons, because they were fearful of arrest in Dubai in circumstances where their families in India were being pressurized by the CBI. They lived freely in Cairo, were able to leave as and when they wanted to and they made plans to remain there and work. They were not coerced into making false statements to the Indian authorities, they decided to return to India having seen a former director who had stayed in India (Divyesh Ghandi) had been able to avoid arrest having made statements against Mr Modi and having made contact with the Indian authorities, they then concocted an account of having been pressured / coerced to go to Cairo to seek to justify their departure from Dubai and preserve their position before the Indian authorities.

89. The flaws in the GOI case are such it is submitted that the s.161 statements taken from the directors are worthless. I am asked to consider various identical verbatim sections of the statements taken from Ashish Lad, Nilesh Mistry and Mayeka regarding what led the directors to go to Cairo. It is submitted that these verbatim sections, which must have been prepared by the investigators causes very substantial concern surrounding the authenticity and reliability of the s.161 statements such that no weight should be attached to those statements. In addition, the notion that the directors were held there against their will is unsustainable when considered alongside the evidence submitted by the defence.

90. The Defence have filed significant evidence including six statements from those who were with the directors in Cairo between April and June 2018. In brief summary, Mohamed Yosr [v N / Tab 7] , a coordinator for tourists and visitors who acted as the directors tour guide in Cairo. Ahmed Akl [v N / Tab 8], a corporate lawyer in Cairo

who assisted the directors to set up businesses in Egypt. Mohamed Selim [v N / Tab 9], a property developer in Cairo who not only helped the directors find suitable accommodation but also became a joint shareholder in the Egyptian companies they incorporated. Ibraham Zakariya [v N / Tab 10] a PR manager at a school in Cairo who showed Ashish Lad around the Al Ahram Modern School in Cairo when he was considering sending his son there. Ahmed Magdy [v n / Tab 11], a real estate broker in Cairo who helped Mr Lad who was looking to buy and apartment which was close to the school. Finally, Subhash Parab [v N/Tab 12] who worked in the finance department at Firestar Dubai who travelled to Egypt with the directors and explains his experience of his time with them. Various contemporaneous documents and communications which support their accounts are exhibited. Taken together it is submitted these statements and their exhibits demonstrate no reliance whatsoever can be placed on the evidence on which the GOI rests its case. It is completely at odds with the reality of the situation in Cairo and therefore the evidence on which the GOI is characterized is "worthless" and ought to be excluded from consideration.

91. Finally, significant criticism is made of Ashish Lad's evidence, particularly his truthfulness about him visiting the schools in Egypt.

Conclusions on prima facie case for supplemental CBI request.

92. I make the following findings on the evidence:

i. Albeit it is submitted on NDM's behalf that the characterisation of the evidence relating to moving documents to CAM is simply evidence of the retainer with the Indian Law firm engaged in January 2018 to act on behalf of NDM and the three Nirav Modi firms to provide strategic and legal advice in relation to the firms interaction with the PNB and other lenders is one view that can be taken of the conduct within the request, however, I find the context cannot be ignored. Once NDM learned in January 2018 that no further LOUs would be forthcoming from the PNB all documentation relating to the companies was moved to CAM. The relevant documents included original LOU applications and request letters which should never have left the PNB. Although whether these were originals is disputed, that is a matter for the trial. However, what is probative in determining whether there is a prima facie case is the evidence that original documents had been returned to the NDM firms by Mr Shetty (as

per evidence from Ranvindra Hindelkar in the first CBI request – see above). Of note the documents were delivered to CAM on the 14th February 2018 at a time when NDM would have been aware of the CBI investigation and searches of the Firestar Group offices which began on the 3rd February 2018. The seizure memo and search list documents materials seized from the CAM offices which included rubber stamps of various entities within the Firestar Group including the NDM firms, blank judicial stamp papers issued in the names of the various Firestar Group entities, original copies of request letters submitted to PNB by the NDM firms for issuance of the LOUs. These should have been in PNB's possession. Also found were blank letter heads of various Firestar Group entities, original invoices, house airway bills and bills of entry. There is no explanation provided why original documents that had been submitted to PNB in support of the LOU applications are in the possession of NDM firms or his co-conspirators or why they were sent to CAM. As I have found in relation to the first CBI request, those documents had been returned by Mr Shetty to the firms contrary to PNB practice and procedure.

ii. I accept there are competing version of events when you compare the statements of the dummy directors and those statements served by the defense about what happened in Cairo. Considering the entirety of the evidence, the dummy directors' evidence in their statements supports the ponzi-like scheme and the operation of the fraud set out in the statements from the PNB officials in relation to the first request. The directors' statements are corroborated by the video recording made in Cairo and the audio recordings of telephone conversations between the directors and NDM's associates in particular his brother Nehal Modi. The audio recordings support the directors' evidence about the involvement of NDM's brother in making arrangements for the directors to travel to Cairo and specific instructions Nehal Modi was giving as to when individuals could leave Cairo and their points of entry back in India to avoid investigating authorities. They also corroborate evidence from the directors that they are told to make statements and what the statements will say by Nehal Modi and indeed Nehal Modi instructs Ashish Lad to travel to Europe to make a statement.

iii. Albeit the witness statements served by the defence provide an alternative narrative about what happened in Cairo, these do not in my assessment undermine the value of the telephone and video evidence in determining

whether there is a prima facie case. The transcripts of the telephone calls make clear who remained in control though inducements and intimidation by NDM, his brother and their associates.

iv. Albeit I accept the submission made by Ms Montgomery that some of the directors' statements included verbatim passages, these were statements made to a police officer. The direct oral evidence would be admissible in England and I find the statements have value. There is no evidence that undermines the bona fides of the officers or supports the defence assertion that the statements had been prepared by the investigators or undermines their authenticity. The statements are being made from the witnesses' own knowledge about what happened to them and what they were told by Nehal Modi and Mihir Bhansali. The contents of their statements and their veracity can be tested at trial.

v. There is clear evidence in Ashish Lad's statement of a direct threat being made by NDM which is supported by the audio recorded conversations between Ashish Lad, Sandeep Mistry and Nehal Modi. In the course of the conversation the threat is impliedly accepted by NDM's brother who apologies for what was said to Ashish Lad.

vi. Again, although there may be no direct evidence of NDM entering into an agreement with his other alleged conspirators, the evidence cumulatively and progressively, taken as a whole create an inevitable conclusion NDM and his co-conspirators were working in concert to cause the removal of evidence from the reach of the investigators, interfering with witnesses to the investigation, destruction of evidence all of which tends to pervert the course of justice. In addition, there is direct evidence of a threat made by NDM to Ashish Lad.

93. I remind myself again that this Court does not have to exclude all of Nirav Modi's alternative narrative and possibilities or his personal interpretations of the evidence. These will be matters for the trial in India and not relevant to the ultimate task for this Court on these requests. Considering these findings, I determine that on one possible view of the evidence, I am satisfied that there is evidence upon which Nirav Modi could be convicted in relation the conspiracy to pervert the course of justice and the stand alone conspiracy to pervert the course of justice by threatening to kill Ashish Lad. A prima face case is established.

Extradition Offences

94. It is submitted by the GOI that the offences specified in the request are extradition offences as defined by s.137(3) of the 2003 Act, which applies where, as here, Nirav Modi is accused in a Category 2 territory of the commissions of offences constituted by the conduct set out in the request. The test is based upon the conduct described rather than upon the elements of the foreign offence *Norris v. USA [2008] 1 AC 920.*

95. I remind myself that the burden rests of the RS to prove to the criminal standard pursuant to s.206 EA 2003 that the offences within the request are extradition offences. I also remind myself of the provisions of s.137 EA 2003:

> ***s.137 Extradition offences: person not sentenced for offence***
> *(1) This section sets out whether a person's conduct constitutes an "extradition offence" for the purposes of this Part in a case where the person—*
>
> *(a)is accused in a category 2 territory of an offence constituted by the conduct, or*
>
> *(b)has been convicted in that territory of an offence constituted by the conduct but not sentenced for it.*
>
> *(2) The conduct constitutes an extradition offence in relation to the category 2 territory if the conditions in subsection (3), (4) or (5) are satisfied.*
>
> *(3) The conditions in this subsection are that—*
>
> *(a)the conduct occurs in the category 2 territory;*
>
> *(b)the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom;*
>
> *(c)the conduct is so punishable under the law of the category 2 territory.*

96. The correct approach is to look at the essentials of the conduct relied on and consider whether if it had occurred in England, at the time it was alleged to have occurred, it would have constituted an English offence. The words "constitute an offence" in s.137(2)(b) EA 2003 do not mean the RS have to prove guilt of NDM in English law, it simply means that, if proved, it would constitute a comparable English offence *Maurov v. USA [2009] EWHC 150 (Admin).* Maurice Kay LJ main it plain that whether to court is dealing with the actus reus or mens rea, the principle is the same,

namely it suffices that the matters alleged would "*be capable of satisfying the requirements of the English offence, if proved.*"

97. A request need not identify the relevant mens rea of the equivalent English offence for the purposes of satisfying dual criminality. Instead it suffices that the necessary mental element can be inferred by the court from the conduct identified in the request documents or that the conduct alleged includes matters capable of sustaining the mental element necessary under English law.

98. Furthermore, at paragraph 57 of *Assange v. Swedish Prosecution Authority [2011] EWHC 2849 (Admin) the "inevitable inference"* test is described as" it *is not necessary to identify in the description of the conduct the mental element or mens rea required under the law of England and Wales for the offence; it was sufficient if it could be inferred from the description of the conduct set out in the EAW. However, the facts set out in the warrant must not merely enable the inference to be drawn that the defendant did the acts alleged with the necessary mens rea. They must be such as to impel the inference that he did so; it must be the only reasonable inference to be drawn from the facts alleged".*

99. This was recently affirmed in the recent decision of the Divisional Court in *Cleveland v. Government of the USA [2019] 1WLR 4392* at para[83]:

> *"To summarise, the "inevitable inference" test set out in para 57 of Assange's case is solely aimed at preventing a person being extradited and then convicted in the requesting state on a basis which would not constitute an offence under English law. Where an essential ingredient under our criminal law is missing from the offence for which extradition is sought, a requirement for dual criminality is none the less satisfied if the court concludes that that ingredient would be the inevitable corollary of proving the matters alleged to constitute the foreign offence. But there is no legal justification for applying the "inevitable inference" test more widely. To do so would breach the general principle that a court dealing with a request for extradition is not concerned to assess the strength of the evidence that would be presented in any trial in the foreign court".*

100. Scrutiny by the Court of the description of conduct alleged to constitute the offence specified, is not an enquiry into the adequacy of the evidence summarised in

the request. The Court is not concerned to assess the quality or sufficiency of the evidence in support of the conduct alleged; *R (Castillo) v. King of Spain [2005] 1WLR 1043*.

101. The GOI submit that the requirements of s.137(3) are met:

i. The conduct occurs in the Category 2 territory – the alleged conduct in all three requests occurred in India or at least in part in India.

ii. The conduct would constitute offences under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or greater punishment if it occurred in that part – the conduct in request of the CBI request would constitute, inter alia, the UK offence of "conspiracy to defraud" which carries a maximum sentence of 10 years imprisonment.

The conduct in respect of the ED request would constitute, inter alia, the UK offence of "Conspiracy to conceal, disguise, convert, transfer or remove criminal property" namely money laundering which carries a maximum sentence of 14 years imprisonment.

The conduct in the Third request would constitute, inter alia, the offence of perverting the course of justice or conspiracy to pervert the course of justice had the conduct occurred in the UK. Perverting the course of justice is punishable under UK law with a maximum sentence of life imprisonment.

iii. The conduct is so punishable under the law of the Category 2 territory:

The offence of criminal conspiracy contrary to s. 120B read with section 420 of the Indian Penal Code is punishable with imprisonment up to 7 years; s.120B read with s.409 of the Indian Penal Code carries maximum sentence of life imprisonment; section 120B Indian penal Code read with section 12 of the Prevention of Corruption Act is punishable with imprisonment up to 10 years.

The offence of cheating and dishonestly inducting delivery of property contrary to section 420 of the Indian Penal Code is punishable with imprisonment up to 7 years.

The offence of money laundering contrary to the PMLA 2002 is punishable with between 3 and 7 years imprisonment.

The offence of criminal conspiracy for causing disappearance of evidence or giving false information to screen offender is punishable with a maximum sentence of 3 years imprisonment.

The offence of criminal intimidation to cause death is punishable with a maximum sentence of 7 years.

102. The GOI submit the requests disclose extradition offences.

103. Ms Mongomery and Mr Watson make submissions arising from evidence I heard from Justice Thipsay. He provided a report dated 20th December 2019 and 29th June 2020, which he adopted [Vol a / Tab 1, Tab 6]. He also gave live evidence by live link on the 13th May 2020. Justice Abhay M. Thipsay is a retired judge of the High Court of Judicature in Allahabad. In relation to the first CBI request, for the purposes of establishing an offence of "cheating" contrary to s.420 of the Indian Penal Code, Justice Thipsay explained that under Indian law there must be an "operative deception" on a "victim". As Justice Thipsay summarises *"It must be shown that the complainant would not have parted with the property, but for the deception payed on him. If the victim is not deceived, there would be no cheating"*. It is submitted that no such conduct is alleged in the request. As Justice Thipsay explained in his evidence *"there must have been a victim who has been deceived. If we see the case of the GOI in the extradition request it is that all the accused who were in the conspiracy, those accused were not deceived. And therefore the GOI has come up with an answer that it was PNB body that was deceived…But I cannot find anybody deceived by the issuing LOU"*. Moreover, it is submitted that as Justice Thipsay explained, under the Indian law of attribution, if it is said, as it is here, that a body corporate (ie PNB) was deceived, then that requires somebody who represents that corporate body to be deceived "*you need to identify a person representing the body corporate*". In

summary, it is submitted on behalf of NDM that the legal submission under s.137 EA 2003 is analogous to the defense submission on the facts: PNB's lending was undertaken openly and with the consent of the relevant bank officials at PNB.

104. With regard to the second charge under Indian law "criminal breach of trust" pursuant to s.409 of the Indian Penal Code, Justice Thipsay's evidence is that the GOI's request fails to meet the requirements that the relevant property has been suitably "entrusted". As Justice Thipsay explains in his report, *"Entrustment is the essence of the offence of criminal breach of trust…I find that except mentioning that the accused persons have committed an offence punishable under s.409 there is no assertion of any facts which would suggest the existence of the ingredients of the offence…the fact that some property was entrusted to any of the accused and that it was utilized by the accused contrary to the directions of law or in breach of any agreement as to the manner in which it should be used is not even averred".* The GOI's answer to this analysis is that the entrapment in this case was the power to issue LOUs was also rejected by Justice Thipsay. *"Yes, that is sought to be made out. But that is not correct. The power to issue LOUs cannot be said to be property. Person who does that cannot be said to be entrusted with property so as to be subject to criminal breach of trust."* Finally, Justice Thipsay states that a required element of the corruption offences is gratification.

105. Finally, in relation to the third request, the issue raised on behalf of NDM is whether the conduct alleged to be perverting the course of justice properly amounts to an offence under either Indian or English law for the purposes of s.137 of the 2003 Act. Under Indian law, Justice Thipsay, explains that there are issues in respect of whether either removing documents from PNB by taking them to CAM and /or the witnesses move to Egypt could constitute an offence of "causing the disappearance of evidence" under s.201 Indian Penal Code. He also questions whether the offence of criminal intimidation under s.506 Indian Penal Code is made out by conduct which is actually only a threat of arrest by the police or ED in Dubai, Hong Kong or India. The submission is that the third request conflates a police investigation with the course of justice, when the two are distinct such that conduct which disrupts a police investigation will not necessarily and of itself amount to an offence under common law of "perverting the course of justice" The defense submit that the only conduct the GOI allege which is relevant to the UK offence of "perverting" is directed toward the

very early stages of the CBI investigation, incapable of amounting to the English common law offence.

106. In relation to Justice Thipsay, I attach no weight to his opinions set out in his reports and in oral testimony.

107. Following giving evidence on the 13th May 2020, the Indian Law Minister Ravi Shankar Prasad, gave a press conference. During the press conference the Law Minster made reference to Justice Thipsay's evidence in these extradition proceedings. The Minister said *"he is a retired judge from the Mumbai High Court, and around ten months before his retirement, the Supreme Court transferred him to Allahabad High Court due to administrative reasons.....that tells its own story"*. Ms Mongomery and Mr Watson submit this was a deliberate insinuation that there was something untoward in Justice Thipsay's transfer. The Minister also comments that Justice Thipsay's evidence was directed by the opposition party in India, the Congress Party; *"a Congress member, who is a judge, a retired judge, give testimony in [Mr Modi's] defence, the situation is so suspicious, that based on it we can conclude that the Congress Party is repeatedly trying to save Nirav Modi"*. He also comments that Justice Tipsay's evidence was *"legally unsustainable"*.

108. I was referred to extensive material regarding the media attention to the Government's comments about Justice Thipsay's evidence. I was due to hear from Justice Thipsay again when the hearing resumed in September. I was asked for either the court to impose an order pursuant to s.4(2) Contempt of Court Act 1981 to postpone the reporting of Mr Justice Thipsay's evidence or alternatively for the court to sit in private during the course of his evidence as a direct consequence of the adverse media coverage he had received in India. Having considered the transcript of the press conference, it was clear in my view that it was a press conference given purely in a political context, albeit as the Minister of Justice, in the context of the BJP Party making political commentary about the Congress Party. That in turn, unsurprisingly, garnered significant attention and headlines within the media and in social media platforms. It was commentary which Justice Thipsay also was interviewed about himself on television in the period between the first part of these extradition hearing and the resumption of the hearing in September. Unwise political commentary maybe

but an equally unwise decision to have engaged with the media himself while these proceeding were *sub judice*.

109. The extradition request for Nirav Modi is a high-profile case in India and I have no doubt that Justice Thipsay as a former High Court Judge has overseen many high profile cases in his time. He entered into the arena of giving evidence in these extradition proceedings with his eyes open to the focus and scrutiny the case would inevitably receive in India. It is inevitable he could have foreseen his affiliation to the Congress Party may attract interest. Having checked his report dated 20th December 2019 and 29th June 2020, I note he has never disclosed his party-political affiliation either in the report's biography or in relation to his declaration as an expert and disclosure of any potential conflict of interests. Justice Thipsay did not initially refuse to give evidence again in these proceedings but he requested the court sit in private as he says *"it is likely to reduce the India media's interest and the risk that the GOI will again use my evidence as a political vehicle and to malign me"*. Albeit I had regard to the interests of Justice Thipsay as a witnesses, sitting in private was not justified merely on the ground, that having regard to the nature of his evidence, testifying publicly may result in further adverse commentary about him. I also refused to postpone reporting under s.4(2) Contempt of Court Act 1981. There was no clear evidence that reporting his evidence will give rise to a substantial risk of prejudice to the administration of justice in these extradition proceedings.

110. I do not concern myself with political commentary and opinions of politicians in India about Justice Thipsay's evidence. However, Justice Thipsay is a retired High Court Judge in India, giving evidence as an expert in this extradition request on behalf of NDM. He is aware of the nature and interest in these proceedings. He would equally be aware of his own political connections to Congress which it transpires he joined after his retirement. Justice Thipsay refused to give live evidence when the extradition hearing resumed. Justice Thipsay is a retired judge who has aligned himself with a political party on his retirement and received adverse commentary in the media. However, he also engaged and courted with the media himself. His additional reports and opinions subsequently submitted by the defence have not been subject to scrutiny. His unwillingness to give further evidence in these proceedings, simply because he did not get the protections which in my view there was no sound basis to grant, meant his opinion went unchallenged by the GOI. There has been no ability for the Court to

further scrutinise his expert testimony. Overall, these factors have the effect, in my assessment, of nullifying any weight I would have attached to his evidence.

111. I remind myself again that the test is based upon the conduct described rather than upon the elements of the foreign offences *Norris v. USA [2008] 1 AC 920*. It is sufficient that the matters alleged would "*be capable of satisfying the requirements of the English offence, if proved*." I have set out already my findings in relation to the prima facie case and I do not intend to rehearse that again. Dishonest behaviour would be the inevitable corollary of proving the matters alleged to constitute the foreign offence. I am satisfied so I am sure that the GOI have proved that the conduct in the requests is capable of satisfying the requirements of the notional English offences, if proved. I am satisfied the requirements of s.137 of the Act are met.

Human Rights – section 87 of the Act

112. section 87 of the Extradition Act reads as follows:

i. s87 Human rights

a. If the judge is required to proceed under this section (by virtue of section 84, 85 or 86) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).

b. If the judge decides the question in subsection (1) in the negative he must order the person's discharge.

c. If the judge decides that question in the affirmative he must send the case to the Secretary of State for his decision whether the person is to be extradited

113. Ms Montgomery and Mr Watson raise Article 6 and 3 challenges under section 87 of the 2003 Act. I must decide whether NDM's extradition would be compatible with his Convention rights within the meaning of the Human Rights Act 1998. If I decide in the negative I must order his discharge.

Article 6 – Fair Trial Rights

114. In relation to the legal framework, the parties are agreed. Article 6 of the ECHR prohibits extradition in circumstances where there are substantial grounds for believing that there is a real risk that, if extradited, an individual would be exposed to a *"flagrant denial of a fair trial" Soering v. United Kingdom (1989) 11 ECHRR 439.*

115. *"Real risk"* does not mean proof on the balance of probabilities. It means a risk which is substantial and mot merely fanciful; and it may be established by something less than proof of a 51% probability *Brown v. Government of Rwanda (2009) EWHC 770.*

116. A "*flagrant denial of justice"* is *"synonymous with a trial which is manifestly contrary to the provisions of Article 6 or the principles embodied therein" Othman v. UK (2012) 55 EHRR 1.* It is the same as establishing a real risk of a "gross violation" or showing that the deficiencies in the process were such that the trial he would face on his return would be *"so fundamental as to amount to a nullification or destruction of the very essence of the rights guaranteed": Dudko v. Russian Federation [2010] EWHC 1125 (Admin).* The burden of proof rests on the request person.

117. Ms Montgomery and Mr Watson submit that NDM's case now *attracts "the most virulent and scathing press and social media commentary. He has been vilified, deliberately humiliated in the public consciousness, and held up as an exemplar of the cause of India's economic woes".* They refer me in to press coverage from 9th January 2020 *"Angry Mumbaikars to burn 58-feet tall effigy of Nirav Modi on "Holi",in which residents of Mumbai have found a way to celebrate the festival of Holi to "vent out their ire against the Punjab National Bank scam accused, businessman Nirav Modi"* A further article in the Indian Express from August 2018 quotes the Environment Minister directing the demolition of an illegal bungalow of Nirav Modi " who has looted India and fled".

118. It is also submitted that Nirav Modi's case has consistently generated political attention. Reference is made to newspaper articles in January 2020 in which Defense Minister Nirmala Sitharaman told media in a press briefing that "*the entire mite of the government has been invoked to pin the culprit Nirav Modi in the fraud case immediately after it came to light. Nirav Modi may have been able to run away from*

the country but government is taking action against him". In addition, comments made by Prime Minister Narendra Modi that the *government "will take stern action against irregularities relating to economic matters……the system will not accept theft of public money"*. These comments made as the Economic Times reports, "*in the wake of alleged bank frauds involving jewelers Nirav Modi and Mehul Choksi and business man Vikram Kothari"*. Ms Mongomery and Mr Watson submit that not only has NDM's case been prejudiced by politicians and commentators, his guilt is being actively promoted by the BJP as part of its campaign messaging.

119. In relation to whether NDM will be unable to advance any defense case before an Indian Court, Ms Montgomery and Mr Watson draw my attention to the statement of Mr Doobay [v D], NDM's Solicitor and the significant issues in preparing Mr Modi's extradition case, where Indian lawyers as experts and witnesses of fact have all demonstrated a marked reluctance to give evidence on NDM's behalf. Referring to an unnamed organisation he approached to find potential witnesses, they stated *"there was a blatant political drive to crush dissent which promoted a climate of fear at many levels in Indian society"* and a fear of standing up against the government. Another unnamed lawyer in India replied stating *"potential witnesses see that friends and associates of Mr Modi have been scrutinized and raised and are fearful to get involved"*. One expert who had agreed to prepare a report in the extradition proceedings is said to have pulled out as *"their children were lawyers and had told them that their practices would suffer by association and that no one would understand the independent and objective role of an expert and would assume that they were supporting Mr Modi"*. Ms Montgomery and Mr Watson submit that access to defence witnesses and defence representation is critical to the fairness of any criminal trial and can be decisive in assessing whether a future trial will be flagrantly unfair.

120. My attention is drawn to a report of a case study of the treatment by the Indian authorities of a person of significant political interest in India, namely a recently extradited suspect Christian James Michel. The report is compiled by the authors through access to his friends and family and private correspondence. This report is adduced in evidence to demonstrate the likely treatment of NDM. In relation to the treatment of Christian Michel by the CBI and ED, the report states that Mr Michel was "*held in squalid conditions, subjected prolonged interrogations, threatened with*

violence and ill-treatment aimed at securing a confession through coercion and has never been formally charged". Ms Mongomery and Mr Watson submit this report provides an accurate guide to the approach of law enforcement investigators to high profile accused / defendants today.

121. During the hearing I received evidence from Justice Katju by live link from India. He is a former Indian judge who served in the Allahabad High Court from 1991, then its Acting Chief Justice and later Chief Justice of the Madras High Court and then the Delhi High Court, before his appointment as a Judge of the Indian Supreme Court until his retirement in 2011. Following his retirement, Mr Justice Katju has served as Chairman of the Press Council of India. His reports and annexes are included in [v N / Tabs 5 & 6]

122. Justice Katju's evidence centered primarily on the fact Indian Courts have become politicised. He states that in recent years the Supreme Court in India has *"practically surrendered before the Indian Government and is doing its bidding and is not acting as an independent organ of the state protecting the rights of the people as it was supposed to be"* and in his view the *"Indian judiciary has largely surrendered before the political executive"*. He gives example of a case heard by the Supreme Court which in his view have been perversely decided and the Chief Justice *was "simply doing the bidding of the Indian Government. He has been rewarded as a quid pro quo by being nominated as a member of Parliament after retirement"*.

123. Justice Katju also makes reference to a former Chief Justice allotting critical cases to benches presided over by relatively junior judges known for their affinity for the ruling BJP party. He further gives account of an incident in January 2018 when four senior Supreme Court Judges addressed the media cautioning that *"democracy was at stake"* aggrieved by the way the judicial system was being operated in the country. Justice Katju concluded that under political influence, crucial matters of public importance were being allotted to handpicked benches of judges favorable to the ruling party and the powers that be. He stated, *"the highest echelons of the Indian judiciary have now come under significant political ad executive influence"*.

124. In answer to supplementary questions, he was asked by Ms Mongomery whether the problem was confined to the superior courts to which Justice Katju

replied that *"there is corruption rampant, large number of judges at all levels have become corrupt. I guess 50% of judges are corrupt in India*".

125. Justice Katju also relies on various examples of political interference in the appointment of judges which he describes as the Supreme Court having become *"subservient to the Indian Government"* which he describes as *"spinlessness and servility"*. He also provides commentary on pro-government judges being appointed to positions of influence by the government on their retirement.

126. Justice Katju also expressed concerns about ministerial pronouncements of NDM's guilt including a press conference given by Mr Ravi Shankar Prasad the law minister who commented that Mr Modi was a fugitive and a criminal, demonstrating an inherent bias and that such comments that NDM is a criminal will have an inevitable effect on the judiciary. He goes on to give his opinion that NDM has been subjected to a media trial and victimised even before the investigation was complete or the trial takes place. He believes that the media coverage has been so negative and prejudiced that *"the entire nation believes him to be guilty of a large-scale fraud"* despite the fact he still remains to be tried.

127. In relation to the CBI, Justice Katju explains there is evidence that the Government blatantly interferes with the CBI's functions and that it functions under the direction of the ruling government. *"Justice cannot be expected from an institution which itself is caged"*. As far as the ED is concerned his opinion is that they are under the complete control of the government.

128. In his evidence to the Court he concluded his opinions regarding NDM having a fair trial by saying that India was in terrible economic collapse even before the pandemic, millions of people lost jobs. He continued by saying that the BJP were trying to solve the problem but they do not know how to, so they find scapegoats and NDM is a scapegoat for causing financial crisis in India. This is the crux of the problem. NDM must be blamed for the collapse of the Indian economy. He is cited as a criminal.

129. In cross-examination, Justice Katju made some astonishing, inappropriate and grossly insensitive comparisons. He stated that because the BJP cannot solve the

economic crises it is just like "*Hitler and the Jews*". *"Nirav Modi is the Jew that must be blamed for all the problems in India"*. When challenged about his imputations about the investigation, he stated that he was not commenting on the merits of the case but that NDM cannot get a fair trial.

130. Ms Malcolm challenged Justice Katju about statements he had made to the Indian media the day before giving his evidence in these extradition proceedings. He agreed he made statements to the media despite the extradition proceedings being *sub judice*. He was challenged about the appropriateness of giving press briefings, and expressing his concerns as a high-profile figure in India was simply making matters worse and undermining the rule of law, a self-fulfilling prophecy.

131. He was challenged about his astonishing allegations concerning the number of corrupt Chief Justices in India. However, Justice Katju replied that *"In last decade – many more chief justices have come and gone and it was known they were corrupt. That is my evidence, that is true. I am an insider – 20 years a judge – I know the workings .....Over 50% of all judges are corrupt – this is my guess"*. Justice Katju denied suggestions he was a self-publicist making outrageous comments to garner press attention.

132. Ms Malcolm challenged some of his historic comments captured in the media. In 2012, he accepted he said that 90% of Indians are fools. *"I say it even now, politicians take advantage"*. He accepted in 2014 in his own blog he said gay relationships were humbug and nonsense, albeit he explained he modified his statement. He also accepted he had previously made a statement that *"Women who remain single are prone to psychological problems"*. He denied he made outrageous statements to court the press. *"I have an opinion and that is my opinion"*.

133. Finally, Ms Mongomery and Mr Watson rely on the events that occurred between the hearing in May and the resumption of the extradition hearing in September. On the 13th 2020 I heard expert evidence from Mr Justice Thipsay [referred to above] by live link. His evidence addressed a series of legal points which I have dealt with ealier in this judgment. The day after Justice Thipsay gave evidence, the Indian Law Minister Ravi Shankar Prasad, gave a press conference. During the press conference the Law Minster made reference to Justice Thipsay's evidence in these extradition

proceedings. The Minister said *"he is a retired judge from the Mumbai High Court, and around ten months before his retirement, the Supreme Court transferred him to Allahabad High Court due to administrative reasons.....that tells its own story"*. Ms Mongomery and Mr Watson submit this was a deliberate insinuation that there was something untoward in Justice Thipsay's transfer. The Minister also comments that Justice Thipsay's evidence was directed by the opposition party in India, the Congress Party; *"a Congress member, who is a judge, a retired judge, give testimony in [Mr Modi's] defence, the situation is so suspicious, that based on it we can conclude that the Congress Party is repeatedly trying to save Nirav Modi"*. He also comments that Justice Tipsay's evidence was *"legally unsustainable"*.

134. Thereafter, I have been referred to extensive material gathered in evidence by Mr Doobay regarding the media attention to the Government's comments about Justice Thipsay's evidence. Mr Doobay's statement dated 30th June 2020 exhibits a schedule of 29 excerpts from media publications and commentary by the press together with a plethora of links to coverage by the 'India Today' programme, broadcast media as well as social media.

135. Ms Mongomery and Mr Watson submit that cumulatively this evidence considered in the context of Mr Justice Katju's evidence of the fragility of the independence of the judiciary, it will be impossible for Nirav Modi to be tried fairly in India.

Conclusions on Article 6 – Fair Trial Rights

136. I accept that NMD's case in India has attracted and no doubt will continue to attract significant media attention. NDM is a high-profile business man who made a huge success of the Nirav Modi brand in India and worldwide. Much of the press reporting to date has been sensationalised and certainly not assisted, in my assessment by Judge Katju's decision to attract media attention following a decision to give press commentary the day before giving evidence in these proceedings while they are *sub judice*. That naturally will fan the flames when Indian media have already covered political commentary on Judge Thipsay's evidence in these proceedings. I agree with Ms Malcolm and Mr Hearn's submissions that sensationalist media reporting in high profile criminal cases is not unique to India and is not unknown in this jurisdiction. Courts are used to dealing with high profile cases which are subjected

to ill-advised political commentary. The GOI adduce an affidavit from the Joint Director of the CBI Bank Security & Fraud Zone dated 12th August 2020 [v 16 / Tab 1] exhibiting a letter from the Solicitor General of India, in which the Solicitor General makes the following observation *"There are a large number of criminal cases being tried in this country with respect to which various leaders across the political spectrum and other person in public life express their views. However, Indian judiciary, while adjudicating on a particular case, remains untouched, unmoved and unaffected. When every accused, including the "requested person" would have all remedies available under the detailed provisions of the Code of Criminal procedure [which ensures protection of rights of every accused of neutrality, impartiality and objectivity of a criminal trial]".*

137. Equally, given the allegations Nirav Modi faces, namely allegations of defrauding a State-owned bank of significant sums of money, it comes of no surprise that the case has garnered political interest and some commentary. However, having considered the transcript of the briefing given by Law Minister Ravi Shankar Prasad, it is clear in my view that it was a press conference given in a purely political context, albeit as the Minister of Justice, in the context of the BJP Party making political commentary about the Congress Party. That in turn generated significant commentary within the media and in social media. It was commentary which Justice Thipsay also was interviewed about in India after he gave evidence.

138. Albeit, some political commentary could be described as ill-advised, there is nothing in the volumes of media, broadcasting or social media links that have been referred to me in the voluminous defense bundles that gives any indication that politicians are trying to influence the outcome of any trial, let alone NDM's trial or that the trial process itself would be susceptible to such influence. I reject any submission that the GOI have deliberately engineered a media onslaught. I attach little weight to Justice Katju's expert opinion.

139. Despite having been a former Supreme Court judge in India until his retirement in 2011 his evidence was in my assessment less than objective and reliable. His evidence in Court appeared tinged with resentment towards former senior judicial colleagues. It had hallmarks of an outspoken critic with his own personal agenda. I found his evidence and behaviour in engaging the media the day before giving

evidence to be questionable for someone who served the Indian Judiciary at such a high level appointed to guard and protect the rule of law.

140. Despite making commentary about the fairness of any trial process in India, he accepted on a number of occasions in cross-examination that he had not considered the evidence and it is evident from his report he certainly had not considered the full requests from the GOI. He made bold assertions about corruption across the judiciary in India (including former Chief Justices) and that the Supreme Court had surrendered itself to the executive. Of note, despite being critical of a former Chief Justice passing a verdict in a Supreme Court case in exchange for a nomination to the upper house of Parliament in India on his retirement on a *quid pro quo* basis, suggesting collusion and corruption, Justice Katju himself secured appointment by the Government to Chairman of the Press Council of India following his own retirement.

141. Despite being highly critical of the "trial by media" and its impact on NDM's case, he took the astonishing decision to brief journalists in relation to the evidence he was giving in these proceedings, creating his own media storm and adding to the heightened media interest to date.

142. I attach limited weight to the statements of Mr Guha [v K]] or Mr Sharma [v L] that the Indian Courts have become increasingly politicised. Their reports are drawn from media articles and anonymous third-party sources. The fact Justice Katju endorses these reports gives no further credence to their contents.

143. Submission that NDM will be unable to secure any witnesses due to fears of the Indian authorities or the Indian media. That conflicts with the statements obtained by the defense in these proceedings from a significant number of witnesses to evidence to alternative narrative to the prima facie case challenges.

144. As Ms Malcolm and Mr Hearn correctly remind me in their final written submissions, of the observations made by the Solicitor General of India. India is governed by it written constitution which has at its core the fundamental principle of the independence of the judiciary by virtue of the separation of powers between judiciary, the executive and the legislature. There is no cogent or reliable evidence that

the judiciary in India are no longer independent, or capable of managing a fair trial even where it is a high-profile fraud with significant media interest.

145. There is no evidence which allows me to find that if extradited NDM is at real risk of suffering a flagrant denial of justice. The argument in relation to Article 6 fails.

Article 3 and Section 91

146. These challenges are separate but also inextricably interlinked due to a deterioration in NDM's mental health since he was remanded in custody in HMP Wandsworth in these proceedings and therefore I intend to deal with the evidence and submissions together, before drawing my conclusions and findings on the respective challenges.

147. The parties are also agreed on the legal framework in relation to Article 3.

148. The legal test under Article 3 in extradition cases is well known; extradition will be prohibited if there are substantial grounds for believing that there is a real risk of treatment which violates Article 3, i.e. treatment which amounts to torture or inhuman or degrading treatment or punishment: *Chahal v. United Kingdom (1996) 23 EHRR 413, Soering v. United Kingdom (1989) 11 EHRR 439; R (Ullah) v. Special Adjudicator [2004] 2 AC 323*. The prohibition is in absolute terms and therefore *"its guarantees apply irrespective of the reprehensible nature of the conduct of the person in question": Aswat v. United Kingdom (2014) 58 EHRR1*. There is no threshold for 'flagrancy'

149. The burden on the defence is less than on the balance of probabilities but the risk must be more than fanciful. *In Elashmawy v Court of Brescia, Italy* [2015] EWHC 28 (Admin) Lord Justice Aikens said that "*in general, a very strong case is required to make good a violation of Article 3. The test is a stringent one and not very easy to satisfy*". The case underlines the importance of making findings about the actual conditions and what their effect will be on the particular RP.

150. In the extradition context, where prison conditions are in issue, the general principles which apply have been summarized by the High Court in *Elashmawy and Riva v. Italy [2015] EWHC 28 (Admin) at para 49.*

151. In so far as overcrowding is concerned, the Grand Chamber in *Mursic v. Croatia (2017) 65 EHRR 1* held that *"the standard predominant in its caselaw of 3m² of floor surface per detainee in multi-occupation accommodation [is] the relevant minimum standard under article 3 of the Convention […] When personal space available to a detainee falls below 3m² of floor space in multi-occupancy accommodation in prions, the lack of personal space is considered so severe that a strong presumption of a violation of art.3 arises. The burden of proof is on the respondent Government which could, however, rebut that presumption by demonstrating that there were factors capable of adequately compensating for the scarce allocation of personal space"*. The Grand Chamber's analysis in *Mursic* has since been adopted by the High Court in *Grecu and Bagarea v. Romania [2017] EWHC 1427 (Admin).*

152. Where an individual requires specific medical care and or treatment, then there must be a particular focus on, and examination of, the medical facilities available to those in custody in the receiving state; see *USA v. Dewani [2014] EWHC 152 (Admin), Aswat v. UK (2014) 58 EHRR 1; and R (Aswat) v. SSHD [2014] EWHC 1216 (admin).*

153. In a case where an assurance is given by a foreign state, the Court is required to consider the eleven "*Othman factors"* when assessing the reliability of an assurance, which ultimately all go to the question of whether the foreign state can be trusted: *Othman v. UK (2012) 55 EHRR 1.* Notwithstanding that assurances can, in principle, be deployed as a mechanism to support a foreign extradition request, they are not a panacea, and ay assurances fall to be considered against a broader canvas.

154. The evidence that this court has had to consider in detail is in relation to the assurances received that that NDM will be held not just at Arthur Road prison in Mumbai but in a particular cell in that prison, Barrack No. 12.

155. In relation to s.91, the legal framework is as follows:

Section 91 ('Physical or mental condition') of the 2003 Act provides:

> *a. This section applies at any time in the extradition hearing if it appears to the judge that the conditions in subsection (2) is satisfied.*
> *b. The condition is that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite him.*
> c. *The judge must (a) order the person's discharge, or (b) adjourn the extradition hearing until it appears to him that the condition in subsection(2) is no longer satisfied.*

156. In *Dewani (no 1) v. South Africa [2012] EWHC 842 (Admin) at [73]:*

> *" In our view, the words in s.91 and s.25 set out the relevant test and little help is gained by reference to the facts of other cases. We would add it is not likely to be helpful to refer a court to observations that the threshold is high or that the graver the charge the higher the bar, as this inevitably risks taking the eye of the parties and of the court off the statutory test by drawing the court into the consideration of the facts of other cases. The term "unjust or oppressive" requires regard to be had to all the relevant circumstances, including the fact that extradition is ordinarily likely to cause stress and hardship; neither of those is sufficient. It is not necessary to enumerate these circumstances, as they will inevitably vary from case to case as the decisions listed in paragraph 72 demonstrate. We would observe that the citation of decisions that do no more than restate the test under s.91 or apply the tests to facts is strongly to be discouraged".*

157. What is unjust or oppressive is a fact specific assessment.

158. Where there is no question but that the defendant is unfit to stand trial then it will be unjust or oppressive to extradite him. *See R(Warren) v. SSHD [2003] EWHC 1177; United States of America v. Tolman [2008] 3 All ER 150, Lynch v. High Court in Dublin [2010] EWHC 109.*

159. Generally, the Court should consider the matter "in the round" as Lord Thomas PQBD held in *Republic of South Africa v. Dewani (no2) [2014] 1 WLR 3220*:

" We therefore accept….that the breadth of the factors to be considered under s.91 include looking at the question of whether it was unjust or oppressive to extradite the person at the time the request was being considered as well as looking forward to what might happen in the proceedings in South Africa if he was extradited. We must take into account all such matters, including consequences to the requested person's state of health and age. We accept that this entails a court taking into account the question as to whether ordering extradition would make the person's extradition worse and whether there are sufficient safeguards in place in the requesting state.

We do not, however, accept that there are any hard and fast rules; that would be inconsistent with the position that each case must be specifically examined by reference to its facts and circumstances. The only situation in which a court would most probably say it would be oppressive and unjust to return him is where it is clear that he would be found by the court in the requesting state to be unfit to plead. "

Evidence from the GOI

160. I have received the following assurance from the GOI. It is dated the 8th June 2019 from the Ministry of Home Affairs [v 6 / Tab 4]. It assures that in the event of his extradition, Nirav Modi will be held at Barrack No 12, Arthur Road Jail. The assurance is accompanied by a document entitled *"The detailed legal and factual framework to show how the terms of the assurance would be delivered in practice".*

161. The letter explains that the RP will have a minimum of 3m square of personal space not including the furniture throughout detention (pre-trial, and post-trial, if convicted). He will be provided with a clean thick coating mat, pillow, sheet and blanket. A metal frame/wooden bed can be provided on medical grounds. Adequate light and ventilation and storage of personal belongings is also available. He will have "sufficient" access to clean drinking water each day and 'adequate' medical facilities are available 24 hours a day. He will have access to 'adequate' toilet and washing facilities each day and be allowed out for exercise for more than one hour a day. He will receive 'adequate' food.

162. Paragraph 4 of the letter of assurance makes it clear that the assurance is a sovereign assurance made by the Government of India in consultation with the State Government concerned.

163. The Government confirm in paragraph 5 that they had furnished a similar assurance in respect of the extradition of Mr Vijay Vittal Mallya and NDM would be accommodated in the same barrack.

164. This is also confirmed in the note where it says the assurances set out in the note are factually accurate and capable of being delivered by Barrack no. 12 for the duration of NDM's detention. The prison authorities are bound by it. Any complaints can be made to the prison administration and also to various other Human Rights bodies and the Judiciary

165. In the accompanying note, there is further information provided on subjects important to the Court's assessment under Article 3 ECHR:

i. Overall conditions
ii. The amount of individual space per inmate
iii. Material conditions (sleeping arrangements, number of people per area, sanitation arrangements, drinking water, food and exercise facilities)
iv. Security
v. Violence
vi. Medical facilities

166. The accompanying note also provides an assurance of living conditions for NDM, if extradited conforming to CPT Standards of Council of Europe or ECHR.

167. It recognises that assertions of overcrowding are often made but says that does not apply to Barrack No. 12, Arthur Road Jail. At paragraph 5 of the note, there is a factual description of material conditions in Barrack 12. The barrack measures approximately 20 ft x 15 ft and has a ceiling which is 20ft high with ceiling fans and tube lighting. It has a separate toilet/wash room. The windows and main door are grilled and provide air circulation. There are 2 such cells in Barrack 12. As at June 2019 there are 3

prisoners in cell number 1 and no prisoners in cell number 2. The minimum $3m^2$ is adequately provided for in Barrack 12.

168. There is more detail on the maintenance and cleaning of Barrack No. 12 including provision of hygiene and cleaning products, the pest control teams visit Barrack 12 once a week and fumigate the barrack to keep it free of mosquitoes and it says that access to drinking water is at will.

169. Daylight is provided by the two grilled windows and one grilled door both facing a passage which itself receives natural light throughout the day. There is adequate artificial lighting and that is described as being "well suited for reading purposes". Ventilation is provided by the three ceiling fans in the cell and in the passage.

170. In terms of sanitary facilities, there is a flushing lavatory and a wash basin with constant supply of water. There is a door between the cell and the bathroom.

171. There is a high level of security at the entrance to No. 12 and CCTV cameras monitor 24 hours a day. A prison officer and a guard are on duty 24 hours a day and the inmates in the Barrack do not mix with other prisoners. There has been no violence in Barrack No. 12 because of the nature of the facilities and the type of prisoners held there.

172. Exercise takes place between 7am to noon and 3pm to 5.30pm in the outdoor "open sky" yard area of Barrack 12 which is 15 feet x 40feet. During inclement weather and monsoons season, there is room for exercise in the passage and hallway area. Board games are made available to the prisoners as well as outdoor badminton.

173. Inmates can do yoga and meditation sessions. Inmates can use a library but also can bring in their own reading matter. Daily newspapers are available too in English and local languages. A television showing terrestrial channels is in the Barrack. Family visits are one a week for 20 minutes. Lawyer meetings are permitted daily except Sundays and public holidays. Video conference facilities are also available.

174. In terms of medical assistance, medical facilities are available 24 hours a day 7 day a week. Four medical officers along with four nursing orderlies and two pharmacists are available, there is a prison hospital with 20 beds and outside experts come in when required. There is a public hospital within 3 km of the prison.

175. Meals are provided three times a day and the prison will try and accommodate special dietary considerations. Home food is allowed with the permission of the court. A canteen provides toiletries, mineral water and snacks, and prisoners are given a fresh supply of bananas daily.

176. Paragraph three of the letter confirms that the conditions set out in the note are accurate and capable of being delivered at Barrack No 12 for the duration of Nirav Modi's detention including in the event of conviction. It states *"the prison authorities are bound by this assurance provided for Nirav Modi and there is no discretion whereby any other administrative, local government or judicial authority would override it as per the law of the land"*.

177. The further information provided in the note confirms that the minimum standards are monitored by officers of the Prison Authority (Prison Administration, Maharashta) , NHRC (National Human Rights Commission), SHRC (State Human Rights Commission) and by the judiciary. The monitoring authorities visit the jail regularly and meets detainees. Detainees can complain to any of the relevant monitoring bodies. It further sets out the training of police and prison staff in relation to the unlawfulness of infliction of physical or psychological mistreatment.

178. I also received a further letter of assurance from the GOI dated 11th September 2020 [v 16 / Tab 11]. This is from the Ministry of Home Affairs and the same Joint Secretary who provided the earlier assurance. The letter is described as a continuation of the assurance provided in June 2019 and confirms that if extradited Nirav Modi "*may receive any relevant and necessary treatment from a private doctor or mental health expert of his choice, including treatment or counselling from psychiatrist, psychologist, as required and paid for him, including coming into prison / over video-link for consultations*".

179. Finally, I was provided with a very useful video of Barrack No. 12 inside and out. The video was shot in in natural light in on 20th August 2020 updating an earlier similar video which had been served in the earlier part of the extradition proceedings and the one used in the case of *Mallya*. The last video is filmed on an overcast and damp day. Barrack 12 is introduced as the area of the prison for high profile offenders. It is apparent it is a well-guarded structure. It has a steel structure above with 20-foot clearance from the ground to ensure free passage of air and light. The video shows the approach to the cell and the Barrack itself. The cell is 300 square feet and the measurements described on the video mirror those in the assurance dated 8th June 2019. The cell looks well decorated and very clean, albeit unoccupied. It has a flat screen LED television screen high on the inside wall and the walls themselves are painted white. The high ceilings have florescent lighting and ceiling fans. The video mirrors the description within the assurance including the ventilation. Despite the overcast day, there appears to be plenty of natural light entering the cell augmented by the florescent lighting in the ceiling. The cell has a large clean en-suite bathroom with shower, sink and flush toilet. Dignity and modesty is protected by a bathroom door and curtain. The bathroom facilities themselves are in fact better than those described in the supporting note to the assurance, which does not mention the shower facilities. It showed a clean, large, well-appointed cell which had no prisoners or furniture in it. It shows where a detainee can exercise.

Defence Evidence

180. As I have already mentioned, the documentary evidence and exhibits in this case is voluminous and the defence evidence in relation to the challenges under Article 3 and s.91 is equally extensive. I mean no disrespect to Ms Montgomery and Mr Watson in not summarising the entirety of the evidence they rely on but that does not mean I have not considered it. I will refer to evidence which I have considered is most probative in making my findings in relation to Article 3 and the case specific assessment I must undertake in relation to s.91.

181. I heard expert evidence from, Dr Forrester. He alone had prepared an initial psychiatric report dated 15th December 2019 and thereafter addendum reports dated 4th March 2020, 27th April 2020, 27th August 2020 and 3rd October 2020. [v I/ Tab 21] [v J / Tab 54 & 55] [v O Tab 4 & 5]

182. I also heard live evidence from Dr Alan Mitchel who had prepared his first report, a supplementary report and a further report.[v I & J], [v O / Tab 1 & Tab 10]

183. I also heard live evidence Professor Coker by live link [v O / Tab 2] .

184. In relation to NDM's mental health, Dr Forrester's most recent report dated 23rd August 2020 is in my view the most relevant. He confirmed the contents of that report in his live evidence. Dr Forrester is an experienced consultant forensic psychiatrist. In his opinion, NDM meets the criteria for a diagnosis of "*recurrent depressive disorder, current episode severe, without psychotic symptoms"*. This diagnosis is not challenged by the GOI.

185. At the beginning of his report in his summary of conclusions he states:

2.1 In my opinion, there has been a further deterioration in Nirav Modi's mental state since I last saw him, such that he now meets the criteria for a diagnosis of recurrent depressive disorder, current episode severe, without psychotic symptoms.

2.2. In my opinion, it is likely that the restricted prison conditions associated with lockdown, as a consequence of the Covid-19 global pandemic, have played a significant role in causing his worsening mood.

186. In relation to suicide risk Dr Forrester states:

9.5 It is also significant that he presents with persisting suicide ideas, and with some suicidal intentions. Although the latter were not immediate in nature when I interviewed him, their emergence does reflect a further deterioration in his overall presentation.

9.6. In my opinion, Nirav Modi should now be considered a substantial (meaning high) albeit not immediate, risk of suicide. I take this view because he has a history of recurrent depression, because I have assessed his current risk of depression as sever, because there is

mounting evidence of progressive deterioration during time in custody at HMP Wandsworth, with a further deterioration over the 4 week period before I saw him, because he has a family history of suicide, and because he has reported both suicidal ideas and intentions (albeit the latter were not immediate in their nature when I interviewed him) .

187. In terms of treatment recommendations, Dr Forrester's opinion is that NDM requires regular psychiatric support to review and adjust his medication as required, along with regular psychological support, to work within a cognitive behavioural model framework to assist in treating the prominent negative cognitions be currently experiences as part of a depressive illness. Dr Forrester explains that having reviewed NDM's medical records from the prison he is not receiving the care and treatment he requires. There still has not been a full or comprehensive assessment of his mental health although he is receiving anti-depressant medication, there is little evidence of joint care provision and has not been receiving psychological treatment.

188. Dr Forrester's opinion is that NDM now meets the criteria for detention under Part III Mental Health Act 1983. Section 48 of the Act deals with the removal to hospital of prisoners in cases where the person is suffering from a mental disorder of a nature and degree which make it appropriate for him to be detained in a hospital for medical treatment. Further, Dr Forrester concludes at para 9.17 of his report that *"In my opinion, he ….should be considered fit to plea at the present time. However, his condition has deteriorated during his time in custody at HMP Wandsworth, with a further dip during the 4 weeks before I assessment to prepare this report. With further deterioration, and in particular with further worsening of his attention, concentration and general ability to think, there is a risk he could become unfit to plead in the future".*

189. In his live evidence, in answer to supplementary questions in chief, Dr Forrester I noted in particular that he stated it was "*Reasonable to conclude the regime in the prison is causative of the decline in his presentation"* and that "*I think he merits hospital transfer for medical treatment*. Although I do note that Dr. Forrester added the following observation "*Having said that, a number of people which severe depression can be treated in the in the community."*

190. In cross examination he also stated that *"I would be prepared to discuss his treatment with a practitioner in India".*

191. At Ms Montgomery and Mr Watson submit, the central issue under Article 3 and s.91 of the Act is whether, in light of this unchallenged diagnosis, the detention conditions which would await Mr Modi in India are capable of meeting his current treatment and care needs, and whether they are capable of responding appropriately to the anticipated further deterioration in his mental health.

192. Assurances have been provided by the GOI as detailed above. It appears to be an agreed position that were it proposed that NDM were to be held in the general population at Arthur Road Prison in Mumbai (Mumbai Central Prison) , Article 3 would no doubt prohibit his surrender by virtue of the conditions in Indian prisons generally falling below acceptable international standards. Therefore, the central issue is whether the assurances provided by the GOI are sufficient to ensure both compatibility with Article 3 and that his extradition will not be "oppressive" under s.91 EA 2003.

193. I received reports from Dr Mitchell dated 8th January 2020 and 21st July 2020 and he gave live evidence before me at the extradition hearing.

194. Dr Mitchell is a licensed practitioner, was previously the Head of Healthcare within the Scottish Prison Service and is currently Chair of the Independent Prison Monitoring Advisory Group for HM Chief Inspector of Prisons in Scotland and is regulatory engaged by the European Committee for the Prevention of Torture (CPT) to carry out prison inspections. I recognise that Dr Mitchell is regularly engaged as an expert witness on prison conditions in extradition proceedings before Westminster Magistrates'; Court. In preparing his reports, he never met NDM. He has relied on the open source material as well as other documents provided by Mr Modi's solicitors together with the video of Barrack 12 provided by GOI. He has never visited or inspected Mumbai Central Prison or Barrack 12 but in 2015 he had experience of inspecting a prison in West Bengal. A request was made by Dr Mitchell to inspect Barrack 12 and Mumbai Central Prison on 26th June 2019 as part of these extradition proceedings but the CPS responded that they would not seek permission from the GOI.

195. Exhibited to Dr Mitchell's reports is significant [Volume I, J and O] open source material relating to Mumbai Central Prison which depicts a picture of longstanding problems of gross overcrowding, conditions of detention being below ECHR standards and lack of rudimentary medical care for its inmates.

196. Dr Mitchell explains the structural deficiencies in India including his concern over the absence of any Independent monitoring system and that as India has not ratified the UN Convention Against Torture (UNCAT) there is no independent monitoring of its prisons by any international body and there is no national prisons inspectorate. In summary his opinions are that prisons are grossly overcrowded. The physical state of prisons suffers from under-investment. Staff shortages across prison estate, which he says are acute at Arthur Road notwithstanding the judicial inquiry ordered by the Bombay High Court in 2015. His overall opinion is that the Indian prison estate struggles to provide proper medical and psychological care for inmates. In 2015 he visited Allipore Central Correctional Home and he concluded that the conditions were "*exceptionally bad and quite unlike anything I had seen in my visits for the CPT*".

197. Dr Mitchell was also referred to some evidence adduced by the defense by way of a letter from Sajasl Yadav [v J / Tab 43]. He was not called to give evidence on behalf of Mr Modi. He is a practicing advocate with the Bar Council of Maharasht. He has represented clients who were lodged in Arthur Road Jail including on the ground floor cells in Barrack 12. He last visited Barrack 12 in June 2018. His description of the unit is *"unbearably hot in the summer months"* and vermin are visible and have free run of the cells. There is extensive dust and noise pollution from the adjoining slum area. There is insufficient natural light. Facilities to communicate with lawyers is poor. There is no proper pharmacy and where medical problems cannot be treated by the prison doctor, hospital attendance is difficult and delays obtaining hospital care can be life threatening. He disputes there is clean drinking water supply and although the assurances refer to hospitals nearby, he states they are referring to the Sir J.J. Group of hospitals which are overcrowded and unhygienic.

198. In answer to supplementary questions in chief, Dr Mitchell agreed he has viewed the latest video of Barrack 12 provided by GOI. In relation to Sadal Yadav's

description of conditions with Barrack 12, Dr Mitchell was critical of the video footage as the problems of noise, pollution, heat and damp and an unhealthy environment is not assessable from the video footage.

199. Dr Mitchell however confirmed that there is no overcrowding issue in Barrack 12, he was satisfied it is *Mursic* compliant in terms of CPT physical space. However, his concern is in relation to overcrowding elsewhere in the prison as that affects the ability of prison staff to do their job. His main concern relates to the sufficiency of staff and healthcare staff to maintain a safe and healthy environment for NDM.

200. In addition, he expressed concern that being potentially alone in Barrack 12 would be particularly harmful equivalent to solitary confinement is harmful in view of Nirav Modi's severe depressive illness. In relation mental health serves in Maharashtra's jail, Dr Mitchell stated that whether a psychiatrist is resident or not is irrelevant. What is important is access to in reach psychiatric services- what is important is access to psychiatric provision. Dr Mitchell referred to the Visitors Book at Arthur Road on 9th July 2019. In his view 3400 inmates cannot be managed by 4 Doctors. 80 staff for over 3000 inmates is clearly insufficient in his view and 4 doctors is equally insufficient. He concluded his evidence in chief by saying that from the material he had seen from Arthur Road – "*I do not believe Nirav Modi would be appropriately cared for by the healthcare infrastructure at Arthur Road Jail. In terms of his detention in Barrack 12 there is provision of his needs and a safe environment but not in terms of his mental health and wellbeing"*.

201. In cross-examination, Dr Mitchell accept again that in Barrack 12 over crowding not an issue. However, he stated again that the GOI had not set out with any detail as to how his healthcare needs will be met if he is extradited and held in Barrack 12 other than saying a doctor is available. "*If Nirav Modi was held in solitary confinement it would have a negative impact on his mental health and wellbeing"*.

202. From the latest video, Dr Mitchell agreed there is a stark difference between the new video and the one produced earlier by the GOI.

203. In relation to the risks of the COVID pandemic, Dr Mitchell agreed that the GOI have implemented guidelines and protocols to control COVID.

204. In relation to the impact of COVID, I received a report from Professor Coker and he gave live evidence at the hearing. Professor Coker is a Professor of Public Health at the London School of Hygiene and Tropical Medicine and a specialist in infectious diseases and epidemiology. He explains that any prison setting is extremely susceptible to any communicable disease, especially COVID as they are closed congregate settings. In his opinion the high prevalence of the virus in Mumbai, especially in the slum areas, necessarily increases the risk of transmission into, and then spread within, a prison. Professor Coker's opinion is that the GOI have provided a deficiency of information to provide any reassurance that there are appropriate measures in place to prevent an unacceptably high risk to inmates. Prisons are extremely susceptible and Barrack 12's relative isolation gives no proper basis for confidence that any inmate detained there would not be at risk of contracting COVID. In answer to questions in cross-examination he accepted the proposition put to him by Ms Malcolm that we are all at risk from COVID and at the time of giving his evidence in these proceedings *" we were immunologically naive in terms of COVID"* . He said the key was reducing the risk and he could not predict what the position would be in a year's time.

205. Ms Mongomery and Mr Watson make extensive submission that in the context of this case, given Nirav Modi's mental health needs, the assurances and the video filed by the GOI are simply inadequate and cannot meet the case under either Article 3 or s.91.

Conclusions Article 3.

206. In relation to NDM's mental health it is of note that Dr Forrester's expert opinion is that the current restrictive prison regime at HMP Wandsworth, as a consequence of the Covid-19 pandemic has played a "significant role" in the deterioration of NDM's depressive disorder. I recognise that the restrictions within our prison estate at present are exceptional as our prison service manages the regime to protect prisoners' health, maintain the security of the prison and protect the health of the prison staff. Albeit Dr Forrester expresses an opinion that consequently NDM's heath now meets the criteria for hospital transfer under s.48 Mental Health Act 1983 he equally qualified this with his statement that "having said that, a number of people

with severe depression can be treated in the community". Mr Modi's condition is far from unusual. Albeit the risk to suicide in Dr Forrester's opinion is now assessed as "substantial" there is nothing within his reports that signifies that NDM's mental health is such that it removes his capacity to resist the impulse to commit suicide. Within his report, it is evident that any suicidal acts would be voluntary. At para 8.27 of Dr Forrester's report he asks NDM whether he has suicidal plans. When answering in the affirmative, NDM said he "can always get razors" and "I wonder if its better to commit suicide rather than be killed". NDM fears persecution and incarceration in India. As Dr Forrester identifies, Nirav Modi's progressive deterioration is linked to the restricted prison regime on remand at HMP Wandsworth and although he has expressed suicidal ideas, Dr Forrester confirms in several places in his report that suicidal intentions are not immediate in nature.

207. With regard to Nirav Modi's fitness to plead, he is regarded as fit to plead at the present time. Albeit Dr Forrester recognises that if extradition is ordered and he is removed to India, he considers it likely NDM's condition would deteriorate. However, Dr Forrester goes no further than saying he "*could become unfit to plead in the future"*. That is not in any way sufficient for me to be satisfied the he **would (my emphasis)** be found by the courts in India to be unfit to plead such that it would be oppressive as stated in *Dewani (no2) [2014] (supra).*

208. GOI has provided comprehensive assurances in relation to the conditions NDM will be detained in Barrack 12, supported by a video taken in August 2020, which I place great weight on as being the best evidence before me to assess the conditions in Barrack 12. I reject the submission that the video does not materially assist this Court's assessment of the actual conditions within Barrack 12. I find that it is entirely corroborative of the conditions set out in the GOI's assurance and in fact goes further as the video shows better sanitary and washing facilities than described in the accompanying note to the assurance dated 8th June 2019.

209. The evidence from Mr Yadav, the Indian lawyer who describes the conditions he has seen in Barrack 12 are simply not born out on the video evidence. Mr Yadav's evidence is placed before me by way of letters rather than sworn statements, his evidence cannot be tested and I place little to no weight on the contents of those letters and reject the defense submission that this provides me with direct evidence of the

conditions in Barrack 12. The video taken by GOI of the cell at Barrack 12 and the facilities contradicts in every way the descriptions given by Mr Yadav. In any event the video was filmed on 20th August 2020. The last time Mr Yadav appears to have visited Barrack 12 was in June 2018.

210. There is no overcrowding in Barrack 12, that was conceded by Dr Mitchell who said that in terms of overcrowding, Barrack 12 was *Mursic* compliant. That is where NDM will be held, not in any other part of Arthur Road prison.

211. The conditions at Barrack 12 in respect of medical treatment. The GOI confirmed in further information that in addition to the prison hospital, a specific ward at JJ Hospital, Mumbai is exclusively reserved for Arthur Road inmates. The further assurance dated 11th September 2020 provides NDM with the opportunity to receive medical care from a private doctor or mental health expert of his choice. Indeed, Dr Forrester confirmed he was willing to engage with any medical health professional in India to discuss NDM's treatment requirements. This letter is a sovereign assurance provided by GOI Ministry of Home Affairs extending additional facilities to NDM in relation to specific medical treatment to him as a named individual. Criticism within defense submissions and the letters from Mr Yadav that diplomatic assurances pertaining to private medical care being at the discretion of the Court is in my view a smokescreen. As Ms Malcolm submits, under the Seventh Schedule of the Indian Constitution, extradition is a matter solely under the purview of Central Government /GOI. As I have already found above, I place little or no reliance on the evidence put forward in Mr Yadav's letters. Suggestions that NDM could not avail himself of private medical treatment as he would have no property or money in India simply does not bear true in light of the substantial securities which have been offered in the various bail application in these proceedings. I find that in accordance with the note accompanying the assurances provided to NDM *"the prison authorities are bound by this assurance provided for Nirav Modi and there is no discretion whereby any other administrative, local government or judicial authority would override it as per the law of the land"*. That statement is compelling evidence of the commitment to comply with the terms of the assurance by the GOI.

212. In relation to Professor Coker's evidence with regard to the impact of COVID-19, the pandemic has presented extraordinary challenges across the globe, an evolving

phenomenon with evolving strains and a rapidly evolving and expanding vaccine programme across the world including in India. It has affected every country's prison regime and like every country, including the UK reactive and restrictive measures have had to be put in place to manage the health or inmates and prison staff alike. The risk of Covid-19 outbreaks during a global pandemic within a prison regime cannot be discounted as we know from reported outbreaks in our own UK prison population. However, this is not being ignored by the GOI and I am satisfied they have provided a comprehensive account of measures taken in their response to Professor Coker's report in Volume 7.

213. The court must consider the Othman criteria (*Othman v UK* (2012) 55 EHRR 1) when looking at an assurance provided by a foreign state. In this case, I find that the assurances are clear, the prison Arthur Road in Mumbai has been identified and the cell Barrack No. 12 has been specified. Various other assurances have been made in relation to the NDM's living conditions in Barrack No. 12 if he is returned and his ability to obtain medical treatment. The assurances have been disclosed to the court and I find that the various representatives which have given the assurances will bind the GOI. The assurances set out the monitoring arrangements through the NHRC, Maharashtra State Human Rights Commissions and judicial officers. The GOI will know that if the assurances are broken, they will be very publicly broken in light of NDM's high profile. Just as Senior District Judge (Magistrates' Court) Arbuthnot (as she then was) observed in her judgment in *Mallya,* I have no doubt NDM's lawyers would report any breach of assurance to this court as well as the Courts in India. That in turn would create *"a perfect storm of publicity"* as the Senior District Judge concluded in *Mallya*. That conclusion is equally apposite in this case. Extradition arrangements work on the basis of trust and any failure to abide by the assurances given by the GOI in NDM's case would doubtlessly affect the trust between this court and the GOI. I have no reason at all to think that the GOI would want to breach that trust by not upholding their assurances provided in support of this extradition request.

214. I am also required to consider the length and strength of relations between the India and this country which are NDM complaining to his lawyers, to the prison authorities, to the courts or to national or state Human Rights Commissions. I have no doubt that Courts would ensure these assurances are upheld. There is no reliable

evidence of the GOI breaching their solemn diplomatic assurance. Examples provided in the defense bundle of conditions other extraditees have been held in were cases where detailed sovereign assurances were not provided.

215. Albeit I accept Dr Mitchell is an experienced prison inspector, he has not visited Barrack 12, or Arthur Road jail. In light of the great weight I have placed on the assurances provided in this case by the GOI and the "best evidence" being the video evidence, I reject Dr Mitchells reservations and concerns. There is no doubt in my mind that the conditions NDM will experience in Barrack 12 are far less restrictive and far more spacious than the current regime he is being held in within the prison estate in our own jurisdiction.

216. Having considered the Othman criteria, I accept the assurances given by the GOI.

217. Having accepted the assurances in principle, I turn next to the prison conditions which in the light of the assurances will apply in this case. I find that NDM will be held in Barrack No. 12 of Arthur Road in Mumbai. As detailed above I find that the video of the cell and the approach to the cell is the best evidence and an accurate portrayal of the conditions in those cells. The cell is large, far larger than the $3m^2$ minimum set out in *Mursic*. The cell is clean and well decorated. It has a very high ceiling, adequate natural light from grilled windows, ceiling fans and strip lighting.

218. I find that NDM will be provided with a thick cotton mat, a pillow, sheet and blanket. He will be able to apply on medical grounds to have a bed. He will have access to drinking water "at will". He will have access to the bathroom which is attached to the cell and appears to be clean and is newly decorated. It has a lavatory; shower and the basin has a constant supply of water. He will be able to wash each day and will receive adequate food. He may be allowed food from home if the court permits.

219. There is sufficient security as corroborated on the video. A prison officer and a guard are on duty 24 hours a day and the inmates of Barrack No. 12 do not mix with other prisoners. I accept further information from the GOI that there has never been any violence in the cell because of the high-profile nature of the prisoners held there.

220. I accept that medical staff resources would be stretched within Mumbai Central Jail but there is in place an assurance that NDM can consult his own private doctors and psychiatrists. It is an assurance which this court considers to be an important one in all the circumstances. I equally accept that there are hospitals very close to the prison were NDM to require hospitalisation.

221.I would expect that for medical reasons the prison should allow Nirav Modi a bed and I have no doubt the Court will look sympathetically at any request for home cooked food. That together will access to medical treatment of his choice and the undertaking given by Dr Forrester that he would discuss recommended treatment with any Indian doctor or psychiatrist engaged to look after Nirav Modi, all these threads when pulled together would enable him to face the proceedings in India in a healthier state.

222. The test for this court to apply is whether there are substantial grounds for believing that the RP, if extradited, would face a real risk of being subjected to treatment contrary to Article 3. Having accepted the assurances and considered the conditions proposed by the GOI, I find there are no grounds at all for believing that NDM would face a real risk of being subjected to treatment breaching Article 3. The argument fails.

Conclusions. S.91 EA 2003

223. In relation to the submissions that NDM's mental health is now such that it would be unjust or oppressive to extradite him, that challenge also fails. As I have determined above, there is no determinative evidence such that it is clear NDM would be found by the Court in India to be unfit to plead. Dr Forrester puts it no higher the "could" if there was to be any further deterioration in Nirav Modi's health. To date such deterioration has been significantly attributed by Dr Forrester to the restrictive regime in HMP Wandsworth. However, the regime awaiting NDM in Barrack 12, when you consider the video, would I have no doubt, be an amelioration of his current conditions of detention, especially when considered alongside the extensive assurances provided by the GOI.

224. Although Dr Forrester within his report from October 2020 describes a need for *"medication, high intensity psychological interventions, electroconvulsive therapy, crisis service, combined treatments, multi- professional and inpatient care"* in view of the assurances provided by the GOI I do not consider it necessary for the GOI to be required to provide further detailed explanation of the care and treatment plan which will be in place for NDM in custody at Barrack 12.

225. In relation to suicide risk, when considering the criteria in *Turner v. Government of the United States of America [2012] EWHC 2426 (Admin)* the evidence presented does not in my assessment meet the high threshold to satisfy me that NDM's mental health condition is such that it would be unjust or oppressive to extradite him. Albeit risk of suicide is assessed as high, Dr Forrester confirms in his report that there are no immediate suicidal intentions. NDM's mental condition is not such that it removes his capacity to resist the impulse to commit suicide. It is clear from Dr Forrester's report that while in HMP Wandsworth the ACCT provisions can be deployed to safeguard against risk and having considered the assurances provided by GOI it is clear the Indian authorities have capacity to cope properly with NDM's mental health and suicidal risk, bolstered by NDM being able to access private treatments from clinicians. I also weigh up the strong public interest in giving effect to extradition treaty obligations.

226. I reject the s.91 challenge.

Procedural Requirements & Decision

227. Section 78(2) of the Extradition Act 2003 requires me to decide whether the documents sent to me by the Secretary of State include:

a) The extradition request and certificate issued by the Secretary of State. [s.78(2)(a)]:

All three requests and certificates have been sent to the Court by the Home Office.

b) Particulars of the person whose extradition is requested. [s.78 (2)(b)]:

The Requests contain details of NDM's identity, including date of birth. No issue is taken by Ms Montgomery and Mr Watson with this requirement.

c) Particulars of the offences are specified in the request [s.78(2)(c)]:

Detailed particulars of the offences have been provided in the requests.

d) In the case of a person accused of an offence, a warrant for his arrest issued in the category 2 territory [s.78(2)(d)]:

A "non-Bailable arrest warrant" has been provided in relation to the CBI extradition request [page 266]
A "non-bailable arrest warrant has been provided in relation to the ED extradition request [page 398]
A "non-bailable arrest warrant" has been provided in relation to the supplementary CBI request issued by the Court of Sessions for Greater Mumbai dated 2nd March 2020 and has been provided.

228. Therefore, I am satisfied that the requests satisfy the requirements of s.78(2) EA 2003.

229. S.78(4) EA 2003 then requires:

(a)the person appearing or brought before him is the person whose extradition is requested;
(b)the offence specified in the request is an extradition offence;
(c)copies of the documents sent to the judge by the Secretary of State have been served on the person.

230. No challenge is raised in relation to s.78(4)(a) or (c) and I am satisfied they are complied with. For the reasons set out above in paragraphs 94 –111 above, I am satisfied the offences specified in the requests are extradition offences.S. 137(3) EA 2003 is satisfied. I therefore proceed under s.79 EA 2003.

231.I must then decide whether the NDM's extradition to India is barred by reason of:

a. the rule against double jeopardy;
b. extraneous considerations;
c. the passage of time;
d. hostage taking considerations;
e. forum.

232. No bars to extradition are raised and I find there are none. As NDM is accused of the commissions of the extradition offences but is not alleged to be unlawfully at large after conviction of them, I must proceed under s.84 EA 2003.

233. If required to proceed under s.84 EA 2003 I must decide whether there is evidence which would be sufficient to make a case requiring an answer by NDM if the proceedings were the summary trial of an information against him. In accordance with my reasons and findings at paragraphs 69 – 73 and 92 – 93 above, I am satisfied there is a prima facie case. I therefore proceed under s.87 EA 2003.

234. I must decide whether the NDM's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998. The challenge raised on behalf of the NDM is that his extradition would not be compatible with his Article 3 and 6 Rights. In accordance with my conclusions at paragraphs 136– 143 (Article 6) and 206 - 222 (Article 3) above the challenges raised are rejected.

235. The remaining challenge under s.91 is rejected as per myconclusions at paragraphs 223 - 226. No other challenges are raised. I am satisfied so I am sure that the RP's extradition to India, is compatible with his Convention Rights within the meaning of the Human Rights Act 1998.

236. Therefore, in accordance with s.87(3) EA 2003 I am sending this case to the Secretary of State for a decision as to whether Nirav Modi is to be extradited.

237. In accordance with the provisions of s.92(2)(a) and (b) EA 2003, I hereby notify Nirav Modi of his right to appeal to the High Court against my decision to send the case to the Secretary of State. I also inform him that if he exercises his right of appeal, the appeal will not be heard until the Secretary of State has made their decision. The appeal can be on a point of law or fact or both (s.103(4) EA 2003).

238. Notice of appeal under s.92 EA 2003 must be given in accordance with the rules of court before the end of 14 days starting with the day on which the Secretary of State informs him under s.100 (1) or (4) EA 2003 of the order that they have made.

District Judge (Magistrates' Court) Sam Goozée
Appropriate Judge
25th February 2021.