



2024:DHC:6901



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 24 July 2024**
Judgment pronounced on: 09 September 2024

+ **CONT.CAS(C) 585/2020 & CM APPL. 14357/2021**

MORGAN VENTURES LIMITEDPetitioner
Through: Mr. Narender Hooda, Sr. Adv.
along with Mr. Tanmay Yadav,
Mr. Rahul Rathor & Mr. Shiv
Bhatnagar, Advs.
Mr. Tarun Singla & Mr. K.C.
Joshi, Advs.

versus

NEPC INDIA LIMITED AND OTHER & ORS.

.....Respondents
Through: Mr. Vivek Kohli, Sr. Adv.
along with Mr. Kartik
Malhotra, Ms. Bhavya Bhatia &
Mr. Anindit Mandal, Advs.

+ **CONT.CAS(C) 586/2020 & CM APPL. 14131/2021**

GOYAL MG GASES PRIVATE LIMITEDPetitioner
Through: Mr. Tarun Singla & Mr. K.C.
Joshi, Advs.

versus

NEPC INDIA LIMITED AND OTHERS & ORS.

.....Respondents
Through: Mr. Vivek Kohli, Sr. Adv.
along with Mr. Kartik
Malhotra, Ms. Bhavya Bhatia &
Mr. Anindit Mandal, Advs.



- + **CONT.CAS(C) 589/2020 & CM APPL. 12876/2021**
MORGAN VENTURES LIMITEDPetitioner
Through: Mr. Tarun Singla & Mr. K.C.
Joshi, Advs.
versus
NEPC INDIA LIMITED AND OTHERS & ORS.
.....Respondents
Through: Mr. Vivek Kohli, Sr. Adv.
along with Mr. Kartik
Malhotra, Ms. Bhavya Bhatia &
Mr. Anindit Mandal, Advs.
- + **CONT.CAS(C) 590/2020 & CM APPL. 14269/2021**
GOYAL MG GASES PRIVATE LIMITEDPetitioner
Through: Mr. Tarun Singla & Mr. K.C.
Joshi, Advs.
versus
NEPC INDIA PRIVATE LIMITED AND OTHERS & ORS.
.....Respondents
Through: Mr. Vivek Kohli, Sr. Adv.
along with Mr. Kartik
Malhotra, Ms. Bhavya Bhatia &
Mr. Anindit Mandal, Advs.
- + **CONT.CAS(C) 587/2020 & CM APPL. 13891/2021**
GOYAL MG GASES PRIVATE LIMITEDPetitioner
Through: Mr. Tarun Singla & Mr. K.C.
Joshi, Advs.
versus
NEPC INDIA LIMITED AND OTHERS & ORS.
.....Respondents
Through: Mr. Vivek Kohli, Sr. Adv.
along with Mr. Kartik



Malhotra, Ms. Bhavya Bhatia &
Mr. Anindit Mandal, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

1. This common order shall decide the aforementioned Contempt Petitions, which have been instituted under Section 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India, 1950, seeking issuance of an appropriate action against the respondents for the deliberate and wilful disobedience of the order of this Court dated 25.05.2016 passed in OMP(I)(COMM) Nos. 180/2016, 181/2016 and 182/2016 and order dated 31.05.2016 passed in OMP(I)(COMM) Nos. 183/2016 and 178/2016, followed by orders dated 29.08.2016 and 10.11.2016 passed in the aforesaid matters.

2. Briefly stated, the parties entered into various agreements dated 07.10.2003, whereby the petitioners agreed to purchase Wind Energy Generators from respondent No. 1. Thereafter, certain disputes arose and the parties preferred Arbitration, wherein the Arbitral Awards dated 11.11.2011 came to be passed, which subsequently stood corrected *vide* order dated 03.01.2012. As stated in these petitions, the entitlement of the petitioners, as per the Arbitral Award are as under:

Sr. No.	Case No.	Post Award	Post Award	Amount (Rs)
	Before Arbitrator	Section 9 petition filed before Hon'ble Court (Original Number)	Section 9 petition filed before this Hon'ble Court (New Members given by	Recoverable by petitioner as on 31.07.2020.



			Registry, subsequent to coming into force of the Commercial Court Acts, 2015)	
In respect of Morgan Ventures Limited				
1.	4/12	OMP 1155 of 2012	OMP (1) (Comm.) 181 of 2016`	27,69,81,061/-
2.	5/19	OMP 1156 of 2012	OMP (1) (Comm.) 180 of 2016	26,85,75,578/-
			Total	54,55,56,639/-
In respect of Goyal MG Gases Private Limited				
Sr. no.	Case No. Before Arbitrator	Post Award Section 9 petition filed Hon'ble Court (Original Number)	Post Award Section 9 petition filed before this Hon'ble Court (New Members given by Registry, subsequent to coming into force of the Commercial Court Acts, 2015)	Amount (Rs) Recoverable by petitioner as on 31.07.2020.
1.	1/32	OMP 1152 of 2012	OMP (1) (Comm.) 183 of 2016	71,91,01,231/-
2.	2/8	OMP 1153 of 2012	OMP (1) (Comm.) 182 of 2016	7,10,26,855/-
3.	3/28	OMP 1154 of 2012	OMP (1) (Comm.) 178 of 2016	42,58,80,178/-
			Total	121,60,08,264/-

3. It is apposite to note that respondent No. 1 had challenged the Arbitral Awards dated 11.11.2011, as corrected/modified *vide* order



dated 03.01.2012, before the Madras High Court under Section 34 of the Arbitration & Conciliation Act, 1996¹. However, the respective petitions moved before the Madras High Court were withdrawn by respondent No. 1 on 03.10.2019, and liberty was granted to respondent No. 1 to file the said petitions afresh before this Court. In this regard, it is stated that presently, the Section 34 petitions moved by respondent No. 1 challenging the Arbitral Awards are pending before this Court.

4. In the interregnum, when the Section 34 petitions moved by respondent No. 1 were pending before the Madras High Court, the petitioner herein instituted relevant petitions under Section 9 of the A&C Act, in pursuance of securing the awarded amounts and this Court was pleased to pass the orders dated 25.05.2016 and 31.05.2016, followed by orders dated 29.08.2016 and 10.11.2016 as mentioned above, to the effect that respondent No.1 was directed to keep aside any monies realised from its debtors, as well as its assets, to secure the dues of the petitioners, in terms of the respective Arbitral Awards. Further, respondent No. 1 was directed to not to dispose of or create any third-party rights in respect of its assets, as enumerated/disclosed in the Affidavit dated 01.03.2016 filed by respondent No. 1. It may be relevant to point out that the respective petitions moved under Section 9 of the A&C Act were disposed of by this Court *vide* order dated 10.11.2016, and the aforementioned directions were passed based on of the statement of respondent No. 1.

¹ A&C Act



5. It is the case of the petitioners that on 03.07.2020 they inspected the records of respondent No. 1, as available on the website of the Ministry of Corporate Affairs, as per which it was found that respondent No. 1 had uploaded its Balance Sheets for the years ending on 31.03.2017, as well as 31.03.2018. As regards the information provided in the Balance Sheets available, the petitioners have averred that subsequent to passing of the orders dated 25.05.2016 and 31.05.2016, followed by orders dated 29.08.2016 and 10.11.2016, respondent No. 1 has realised a sum of Rs. 40.65 crores from its debtors and assets but has not kept aside the said amount to secure the dues of the petitioners, and therefore, the same constitutes deliberate and wilful disobedience of the aforesaid orders passed by this Court.

6. It is further stated that at the relevant time, respondents No. 2 to 5 were Directors of the respondent No. 1 company, and were at the helm of managing its affairs. Therefore, they have also been impleaded in these matters and are liable for contempt of Court.

7. A Counter-Affidavit dated 09.12.2020 was filed on behalf of the respondents, wherein it is stated that the entries in the Balance Sheets referred to by the petitioners to allege the wilful and deliberate disobedience of the orders of this Court by the respondents, do not constitute a breach or violation of the said orders and that the same are in the nature of book adjustments, corresponding to which liabilities have also reduced, and that such adjustments have been made in keeping with all accounting standards and principles. It is further contended therein that the instant contempt petitions are not maintainable as the alleged breach/violation of the orders occurred in



March of 2018, whereas these petitions were only instituted in the year 2020 and are therefore time-barred in view of Section 20 of the Contempt of Courts Act, which provides a limitation period of one year for filing a petition from the date of the alleged contempt.

LEGAL SUBMISSIONS:

8. It is submitted by the learned counsel for the petitioners that the total liability of respondent No. 1 towards the petitioners as on 31.07.2020, is to the tune of Rs. 176 crores approximately and that no money has yet been paid by the respondents towards the satisfaction of the dues owed to the petitioners.

9. As regards the contention of the respondent, which is made on the basis of reliance on a Certificate dated 04.12.2020 issued by the Chartered Accountant, namely Mr. A Nageshwaram, to the effect that the concerned amount of Rs. 40.65 crores have not been realised by the respondent company but has instead been ‘written off’, and it has been urged by the learned counsel for the petitioner that the amount could not have been written off, without the prior permission of this Court, as the entire amount pertaining to the debtors and assets of respondent No. 1 were under the lien of this Court, in light of the order dated 10.11.2016. In respect of this contention, reliance has been placed on the decision of this Court in the case of **Morgan Securities and Credits Private Limited v. BPL Limited & Ors.**²

10. It was further contended that the stand of the respondents with respect to the amount being written off is itself contrary to the averments made by them in their Counter-Affidavit, as per which they

² Judgement dated 18.12.2018, passed in CCP No. 05/2017



had stated that the concerned entries were mere book adjustments, corresponding to which the liabilities have been reduced. Learned counsel for the petitioners has also alluded to specific entries in the Balance Sheet of respondent No. 1 for the year ending 31.03.2017, whereby it is indicated that in the Financial Years 2016-17 and 2017-18, the amount written off by respondent No. 1 is stated to be *Nil*. Further, reference was also invited to the entries in the Balance Sheet for the year ending on 31.03.2018, and it was pointed out that the receivable amount of Rs.38.51 Crore as on 31.03.2017 was reduced to Rs.51.92 Lakh as on 31.03.2018 and that the allowance for bad or doubtful debts is reflected as *Nil*.

11. As regards the issue of maintainability of these petitions on account of the same being time-barred, it is submitted that the breach/violation of the orders of this Court only came into the knowledge of the petitioners on 03.07.2020, when they inspected the records of respondent No. 1 available on the website of the Ministry of Corporate Affairs, and only thereafter, these petitions came to be filed on 25.09.2020, which falls within the period of limitation as prescribed by Section 20 of the Contempt of Courts Act. In this regard, reliance has been placed on the decision of the Supreme Court in **Bank of Baroda v. Sadruddin Hasan Daya**.³

12. *Per contra*, learned Senior Counsel for the respondents has referred to the Affidavits dated 09.12.2020 filed by the respondents and submitted that as stated therein, the amount of Rs. 40.65 crores which is in contention, was never realised by the respondents, as is

³ (2004) 1 SCC 360



alleged by the petitioners, but instead are receivables which were deemed unrecoverable, and were therefore written off from the books of the respondents. It is submitted that the amounts written off constituted necessary accounting adjustments and they do not reflect any cash inflow or asset realisation. Reliance was placed on the Statutory Auditor's Certificate dated 04.11.2020 as well as the Certificate dated 04.12.2020 issued by a Chartered Accountant, namely Mr. A Nageswaran, to clarify the financial statements of respondent No. 1 and it is vehemently urged that no cash was credited and that there was no 'realisation' of any receivables.

13. It is further submitted on behalf of the respondents that there is an automatic statutory stay on the Arbitral Awards, in light of the Section 34 petitions instituted by respondent No. 1, which are pending adjudication. Consequently, the petitioners are attempting to seek enforcement of the Awards under the garb of these contempt proceedings. It has also been urged that these petitions are time-barred and fall foul of Section 20 of the Contempt of Courts Act, since the basis of the alleged contempt is the Balance Sheet of the respondent company for the year ending 2018, which were in the public domain since 25.04.2019, having been filed on the said date. However, these petitions only came to be filed in the year 2020.

ANALYSIS & DECISION:

14. I have given my anxious consideration to the submissions advanced by the learned counsel for the parties at the Bar and have also perused the relevant record of the case.



15. First things first, it would be expedient to reproduce the order of this Court dated 10.11.2016, which provided as under:

“1. It is stated that the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (‘Act’) filed by the Respondent is still pending. 2. Learned counsel for the Petitioner states that the said petition has been opposed on the ground that it has been filed before a Court which lacks territorial jurisdiction as well as on other grounds.

3. The present petitions under Section 9 of the Act have been filed for interim reliefs against the Petitioner at the post-Award stage.

4. Having heard learned counsel for the parties, the Court directs that in O.M.P. (I) (Comm.) Nos. 178/2016 and 183 of 2016 the order dated 12th December 2012 coupled with the order dated 31st May 2016, and in O.M.P. (I) (Comm.) Nos. 180 of 2016, 181 of 2016 and 182 of 2016 the order dated 12th December 2012 coupled with the order dated 25th May 2016, as corrected by the order dated 29th August 2016 and **which records the statement of the Respondent regarding securing of the amounts realised from the debtors and its assets and not creating any third party interests in respect of the immovable property in terms of the affidavit of Respondent No.1 dated 1st March 2016, is directed to continue for a period of four weeks after the disposal of the petition under Section 34 of the Act.**

5. The petitions and the applications are disposed of in the above terms.” **{ Bold portions emphasized }**

16. A careful perusal of the aforesaid order would show that apart from statement on behalf of the respondent No.1 regarding securing of the amounts realized from debtors and its assets, there was directed that no third party right or interest shall be created in respect of the immovable properties of the companies in terms of the affidavit dated 01.03.2016 for four weeks. We assume that such condition shall remain invoked till there is a final decision on the appeal under Section 34 of the A&C Act.

17. First things first, there is no issue regarding the creation of any right, title or interest in respect of immovable property. The grievance



of the petitioners appears to be the alleged appropriation of amount of Rs. 40.65 crores during the financial years 2016-17 and 2017-18 from its debtors and assets without the permission of the Court. At first blush, it does seem that the respondents might have realized certain debts, but that is not the case. The larger question is whether any inflow of the cash or credit came to respondent No.1 company from its debtors, which is completely amiss. The plea of the petitioners concerning relevant entries in the balance sheet as on 31.03.2017 and 31.03.2018 cannot be accepted at face value unless and until it is demonstrated by direct accounting entries or any tangible evidence that debts were indeed realized. In other words, the petitioners have been unable to establish, in terms of accounting practices, that respondent No.1 company discharged its recoverable debts or securities in a way that brought cash or other valuable security into its corpus.

18. At this juncture, it would be expedient to reproduce the certificate by the Auditor Mr. A. Nageswaran *in extenso* which appear to clinch the entire issues and same is as under:

1. Is there any changes in Debtors, Creditors if so, what are the implications?

Regarding Balance Sheet for the year of 16-17 the company has in its necessity to write off unrecoverable debtors and non-payable creditors has passed journal entries to write off the amount as mentioned in the balance sheet. Which is permissible under accounting standard.

Regarding Balance Sheet for the year of 17-18 is concerned the company has written off Trade receivables from Rs.3851.92 to 51.92 Lakhs (written off Rs.3800 Lakhs) Similarly for the said year the long terms loans and advances has been written off From 13712.46 Lakhs to 13606.63 Lakhs (written off 105.83 Lakhs) and also written off non-payable creditors. Which does not create any



inflow or outflow for the company and keep the company as a going concern.

2. Is there any changes in non-current investments?

This is to certify that the Balance Sheets of the company pertaining to 15-16 prepared have written off the Turkestanenergo investment because of issues raised by the Turkestan, Kazakhstan, JV partner to write off and take over the assets. Hence it was necessity to write off the investment which resulted in write off and no inflow in company. It is a loss of Rs.1,60,00,000/- (Rupees One Crore Sixty Lakhs) in the books of the company in accounting parallel for the company.

NEPC INDIA LTD., YEAR ENDED 31.03.2015 & 31.03.2016

Shareholders Funds	31.03.2015	31.03.2016	Inc/Dec.
a) Share Capital	7516.46	7516.46	0
b) Reserves & Surplus	-2909.61	-2935.02	-25.41
<u>Non Current Liabilities</u>			
a) Long Term Borrowings	16159.27	16159.27	0
<u>Current Liabilities</u>			
a) Short Term Borrowings	4.08		4.08
b) Trade Payable	3507.65	3533.18	25.53
c) Other current liabilities	90.37	105.40	15.03
d) Short Term Provision	146.67	148.67	2.00
Total	24514.90	24527.96	13.06
<u>ASSETS</u>			
<u>1.Non-Current Assets</u>			
a) Fixed Assets			



(i) Tangible Assets	3374.64	3374.64	0
b) Non Current Investments	175.95	15.95	-160
c) Long Terms Loans & Advances	13712.46	13712.46	0
2.Current Assets			
a) Inventory	59.15	59.15	0
b) Trade Receivables	3851.92	3851.92	0
c) Cash & Cash equivalents	3.48	1.83	-1.65
d) Short Term loans & Advances	3337.31	3512.01	174.70
Total	24514.90	24527.96	13.06

3. Is there any changes long term loans and advances?

Regarding Balance Sheet for the year of 17-18 is concerned the long term loans and advances has been written off From 13712.46 Lakhs to 13606.63 Lakhs (written off 105.83 Lakhs) and also written off non-payable creditors. Which does not create any inflow or outflow for the company and keep the company as a going concern.

NEPC INDIA LTD., YEAR ENDED 31.03.2017 & 31.03.2018

<u>Shareholders Funds</u>	31.03.2017	31.03.2018	Inc/Dec.
a) Share Capital	7516.46	7516.46	0
b) Reserves & Surplus	-2978.70	-2993.91	-15.21
<u>Non Current Liabilities</u>			
a) Long Term Borrowings	16159.27	12224.30	-3934.97
<u>Current Liabilities</u>			
a) Short Term Borrowings	0	0	0
b) Trade Payable	3533.19	3533.19	0
c) Other current liabilities	105.40	105.40	0
d) Short Term	192.34	233.91	41.57



Provision			
Total	24527.96	20619.35	-3908.61
ASSETS			
1.Non-Current Assets			
a) Fixed Assets			
(i) Tangible Assets	3374.64	3374.64	0
b) Non Current Investments	15.95	15.95	0
c) Long Terms Loans & Advances	13712.46	13606.63	-105.83
2.Current Assets			
a) Inventory	59.15	59.15	0
b) Trade Receivables	3851.92	59.92	-3800
c) Cash & Cash equivalents	1.82	0.04	-1.78
d) Short Term loans & Advances	3512.01	3511.00	-1.01
Total	24527.95	20619.35	-3908.6

It shall be noted that the queries have been clarified based on the accounting records maintained by the Company and adequate internal financial controls that were effectively operating for ensuring accuracy of the accounting records. Further the clarifications provided are purely based on the records of the company as available to us and this shall under no circumstances be considered as acceptance of any contentions or allegations raised by you.

Hope this clarifies the queries raised.

Thanking You,
Yours Faithfully,
FOR A. NAGESWARAN
Sd/
CHARTERED ACCOUNTANT
Members Ship No. 200/02391
Place: Coimbatore
Date: 04.12.21



19. On a careful perusal of the aforesaid report, which has not been countered by any report from a Chartered Accountant or financial expert, the position stated by the respondents in their individual affidavits, to the effect that the amount of Rs. 40.65 crores have not been realized whatsoever, and the receivables which were due but not recoverable, or that it was not feasible to be collected, appears to have been rightly written off. Although much has been argued that this is not a standard accounting practice, I am afraid this Court is shown no literature or authority on that score. Elementary as it may seem, those with even a little knowledge of accounting practices know that there are procedures to write off bad debts that are not recoverable due to being time-barred, or unlikely to be realized because the debtor has become insolvent or the company has gone into liquidation, to cite a few examples. It is a practical measure to arrest any situation of showing inflated assets of a company.

20. Anyhow, this Court has not been shown any 'Standard Operating Protocol' or accounting/financial standards so as to suggest that the writing off such due, as claimed by the respondents, is wrong or not permissible while taking financials decisions on the part of the company. All said and done, this Court is not going to engage into any meticulous accounting exercise so as to come to a final verdict upon the fairness or justification of such accounting process adopted by the respondents. The contempt proceedings cannot be invoked to resolve disputed factual issues. For now, this Court holds that there is no clear case or cause of action of action so as to hold that the respondents



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have committed any wilful or deliberate disobedience of the directions of this Court.

21. Accordingly, the present Contempt Petitions are dismissed.
22. The pending applications also stand disposed of.

SEPTEMBER 09, 2024

Sadiq

DHARMESH SHARMA, J.