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

\+ CONT.CAS(C) 75/2021 & CM APPL. 62249/2023

MR.RAJAN CHADHA & ANR. ..... Petitioners

Through: Mr. Rohan Jaitley, Mr. Akshay Sharma, Mr. Bhuvnesh Sehgal & Mr. Dev Pratap Shahi, Advs.
M: 8587967565

versus

MR.SANJAY ARORA & ANR. ..... Respondents

Through: Mr. Abhimanyu Mahajan with Mr. Rakesh Kumar, Mr. A Mishra, Mr. Sahil and Mr. Nidhish Gupta, Advocates for the Respondent/Contemnor

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T
03.07.2024

MINI PUSHKARNA, J:

1. The present petition has been filed alleging willful disobedience of the order dated 11th June, 2020 passed by this Court in *OMP (I) (Comm.) No. 127/2020*, and orders dated 17th June, 2020, and 1st July, 2020, passed by the learned Arbitral Tribunal.

2. The petitioners herein were the directors and shareholders of respondent no. 2/RBT Private Limited ("the company"), which is engaged in the business of manufacturing, and export of garments.

3. On 21st December, 2019, a Memorandum of Understanding ("MOU")

was executed amongst all the shareholders and directors of respondent no. 2-company. In terms of the said MOU, respondent no. 1 herein, who was also a shareholder and director of respondent no. 2-company, was to purchase the entire shareholding of respondent no. 2-compnay from the petitioners, and thereafter, was to be responsible to run the affairs of the company.

4. Subsequently, disputes arose between the petitioners and respondent no. 1 herein, wherein, it was alleged by the petitioners that the respondent no. 1 had failed to discharge his obligation under the MOU and was using the premises of the respondent no. 2-company for commercial gains of his other entities. Thus, a petition under Section 9 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), being *OMP (I) (Comm.) 127/2020*, came to be filed by the petitioners, wherein, it was *inter-alia,* prayed for direction to restrain the respondent no. 1 herein from disposing of/alienating, siphoning of, or in any manner creating any third party interest or charge, in the assets of respondent no. 2-company.

5. During the course of hearing on 11th June, 2020 in the said petition under Section 9 of Arbitration Act, submissions were made on behalf of petitioners that the respondent no. 1 must be directed to pay the EMIs ("Equated Monthly Installments"), which are required to be paid monthly and the said liability must not be fastened upon the petitioners. It was further submitted on behalf of the petitioners that the respondent no. 1 herein was taking away the raw material and machinery installed at the premises of respondent no. 2-company. However, the said submissions were disputed by the respondent no. 1 herein, and it was stated in the said proceedings that neither any material, nor any machinery, was being taken away. It was further stated that the respondent no. 1 herein shall not take away any raw

material or machinery, pending reference to the Arbitrator. Thus, by order dated 11th June, 2020, an Arbitrator was appointed and the aforesaid petition was disposed of in the following manner:

> *"xxx xxx xxx*
>
> *6. I may state here that Mr. Darpan Wadhwa has not opposed to the appointment of a new Arbitrator to adjudicate the dispute between the parties.* ***His submission is, that pending reference of the dispute to the Arbitrator, the respondent No.2 must be directed to pay the EMIs which are required to be paid monthly and the said liability must not be fastened upon the petitioners. That apart, it is his submission that the petitioners have come to know that the respondent No.2 is taking away the raw material and the machinery installed at the premises of the respondent No.1 company in Faridabad. That apart, he also states that the premises of the respondent No.1 company is being used for third parties and not for respondent No 1, which must be restrained. Mr. Mehta dispute the submissions. He on instructions also state that neither any material nor any machinery is being taken away. He qualifies the submission by stating that the pending reference to the Arbitrator, the petitioners shall not take away any raw material or machinery from the premises of the respondent No.1 company. He also state that the premises is not being used for third parties and shall not be used so in future.***
>
> *7. Having noted the submissions made by the counsels for the parties and their agreement for appointment of a new Arbitrator, this court deem it appropriate to appoint Justice Indermeet Kaur, a retired Judge of this Court as a Sole Arbitrator, who shall adjudicate the dispute between the parties. The fees of the learned Arbitrator shall be regulated by the provisions of Fourth Schedule to the Arbitration & Conciliation Act, 1996.*
>
> *8. As the counsels have shown urgency in this matter, I deem it appropriate to list this matter before Justice Indermeet Kaur on June 17, 2020 at 04:30 P.M. The learned Arbitrator shall be at liberty to conduct the proceedings, through Video Conferencing. The petitioners are directed to email the complete copy of the petition including annexures along with copy of this order by tomorrow to Justice Indermeet Kaur by taking her e-mail ID by calling her on her mobile No. 9910384614.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

6. Subsequently, when the matter was taken up by the learned Arbitrator on 17th June, 2020, the learned Arbitrator passed an order, thereby directing that the statement made on behalf of respondents, as recorded in the order dated 11th June, 2020, shall be binding upon the respondents. Thus, vide order dated 17th June, 2020, the learned Arbitrator, passed the order, in the following manner:

> *"xxx xxx xxx*
>
> ***The statements made by the learned counsel for the respondent No.1 & 2 before the Hon'ble High Court (while recording the order dated 11.6.2020), will needless to state, be binding upon the said respondents.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

7. Subsequently, by way of order dated 1st July, 2020, passed by the learned Arbitrator, upon the application under Section 17 of the Arbitration Act, filed on behalf of the petitioners seeking interim relief, was allowed. It was directed that the statements made by the respondents before the Court, as recorded in the order dated 11th June, 2020, shall continue till the disposal of the arbitration proceedings. Further, the learned Arbitrator held that till the disposal of the arbitration proceedings, the respondent no. 1, acting for and on behalf of respondent no. 2-company, shall continue to pay the EMIs into the loan account of the company, as per the terms and conditions of the loan account. The relevant portions of the order dated 1st July, 2020, passed by the learned Arbitrator, read as under:

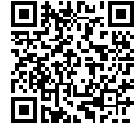
> *"xxx xxx xxx*
>
> *37. Learned counsel for the claimant further submits that he is only pressing prayer (e) of his application. The undersigned notes this submission.* ***The undersigned also notes the statement/concession***

> ***granted before Hon'ble High Court by the respondent on 11.6.2020 which would continue till the disposal of the arbitral proceedings. The undersigned is of the view that an irreparable loss and injury would be suffered by the claimant at this stage if the loan liability is not discharged (as per the terms and conditions of the loan) and if the EMIs are not paid by the respondents the collateral security (house owned jointly by claimant No.1 and his wife) could become the subject matter of summary proceedings under the SARFESI Act***. *This apprehension of the claimant at this stage has been prima facie established and balance of convenience is thus in favour of the claimant.* ***Accordingly the undersigned is of the view that till the disposal of this petition respondent No.2 acting for and on behalf of Respondent No.1 shall continue to pay the EMIs into the loan account of the company as per the terms and conditions of the loan account***.
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

8. The aforesaid order dated 1st July, 2020 passed by the learned Arbitrator, was assailed by the respondents by way of an appeal under Section 37 of the Arbitration Act, being *Arb.A.(Comm.) 15/2020*. The said appeal was dismissed vide judgment dated 5th October, 2021, thereby holding that after 1st November, 2019, all liabilities of the respondent no. 2-company, including payment of loan taken from the banks, were to be met by respondent no. 1 herein.

9. It is the case of the petitioners that the respondents have till date, not complied with the direction passed the Arbitral Tribunal, and have failed to pay any amounts towards the EMIs payable by them. On account of the failure of the respondents in paying the EMIs, the petitioners have been forced to pay the said EMIs to the South Indian Bank. Learned counsel appearing for the petitioners submits that the petitioners have paid an amount of ₹ 4.10 Crores to the bank, till date.

10. Subsequently, the petitioners came to know that some machinery,



which was hypothecated with South Indian Bank by the company, had been sold by respondent no. 1. Thus, the petitioners filed an application under Section 26 of the Arbitration Act for appointment of a Local Commissioner, as it was alleged by the petitioners that the respondents had violated the orders passed by this Court, as well as the learned Arbitral Tribunal, during the pendency of the arbitration proceedings.

11. Therefore, the learned Arbitral Tribunal appointed a Local Commissioner to inspect the premises of the respondent no. 2-company and to make an inventory of the machinery, as well as of the books of accounts of the company. The Local Commissioner visited the premises of the company on 22nd December, 2020. As per the report of the Local Commissioner, a machine, i.e., Flat Bed Printing Machine, was missing. In addition, another machine, i.e., J-Spray Washer Machine, was lying dismantled at the second floor of the company premises.

12. Thus, it is the case of the petitioners that the respondents are selling the hypothecated machinery, which is in complete contravention to the undertaking given by the respondent before this Court. In addition, the respondents, till date, have not paid any EMIs as directed by the learned Arbitral Tribunal.

13. The petitioners have also placed reliance on the Minutes of Meeting of the Committee of Creditors ("COCs") dated 10th August, 2021, wherein, it has been stated that the respondent no. 1 had removed the books of accounts, laptops, computers, cameras, account servers, clothes etc., from the premises of the respondent no. 2-company. It is contended that the respondent no. 1 had accepted the aforesaid, and had assured the COCs that the said articles will be handed over to the Resolution Professional.

However, the same has not been done till today.

14. Attention of this Court has also been drawn to the order dated 5th December, 2023 passed in the present proceedings, wherein, the respondent no. 1 has been held guilty of contempt by this Court. Thus, the respondent was directed to Show Cause, as to why he should not be punished under the Contempt of Courts Act, 1971. The order dated 5th December, 2023, passed in the present proceedings, reads as under:

> *"xxx xxx xxx*
>
> *4. **<u>It is stated that the respondent has not paid the EMIs and the loan of the RBT Private Company has been taken over by the Assets Reconstruction Company (ARC).</u>***
>
> *5. **<u>Pursuant to the same, it is the petitioner who had given a personal guarantee for the loan of RBT Private Limited and has been paying the EMIs to save his personal guarantee in the form of a mortgage of his residential house.</u>***
>
> *6. **<u>In addition, it is further stated that the respondent has also violated its undertaking given in the order dated 11.06.2020 that neither any material nor any machinery was being taken away.</u>***
>
> *7. Mr. Jaitley, learned counsel for the petitioner has also drawn my attention to the meeting of the CoC held on 10.08.2021, wherein it has been observed as under:*
>
>> *"ITEM NO. 6: To take on record the status of Assets and Books of Accounts of the Company, Directors are in process of providing of financial data and thus there is difficulty in determination of Financial Position u/s 21(1) of the Insolvency and the Bankruptcy Code, 2016.*
>>
>> *The directors of the suspended Board of the Corporate Debtor are not Co-operating and did not provide the books of the accounts and other information an application under 19(2) is in process.*
>>
>> *Resolution Professional appraised the CoC that on enquiry from the ex-employees it came to his knowledge that Suspended Board Member Mr. Sanjay Arora has removed books of accounts, Laptops, Computers, Cameras, Account Servers, Clothes and many other items from the premises of the Corporate Debtor and Keep these items at his school location. Mr. Sanjay Arora accept this in the meeting and assure to hand over all above things to the*

> *Resolution Professional on next following day.*
> *The CoC took a note of the same."*

xxx xxx xxx

13. In the present case, the minutes of the CoC held on 10.08.2021 clearly shows that the respondent No. 1 has removed the material from respondent No. 2 company and has assured to handover the same on the next day. The same has not been done.

14. As per the order of the Arbitrator, the respondent was directed to pay EMIs of the loan and the same has also not been done.

*15. The petitioner has placed reliance on the judgment of **"Urban Infrastructure Real Estate Fund vs. Dharmesh S. Jain & Ors."** [(2022) 6 SSC 662] and more particularly para 20 which reads as under:*

> *"20. Further, it is trite law that the jurisdiction of a Court under the Act, would not cease, merely because the order or decree of which contempt is alleged, is executable under law, even without having recourse to contempt proceedings."*

16. I have heard learned counsel for the parties.

17. The respondent Nos. 1 and 2 are distinct entities and the undertaking given was not by respondent No. 2 i.e. the company but by respondent No.1. In addition, the order dated 11.06.2020 directed respondent No. 1 to make the payment towards the loan account. The payment as directed by the Court has not been paid by respondent No. 1.

*18. **Respondent No. 1 is not under liquidation and hence Section 14 moratorium will not apply to respondent No. 1. The judgment of Urban Infrastructure (supra) is applicable to the facts of the present case and filing of enforcement proceedings u/s 36 will not bar this contempt petition.***

*19. **For the said reasons, I am of the view that respondent No. 1 is guilty of intentionally and malafidely violating the orders dated 11.06.2020 and 01.07.2020 and thus, has committed contempt of the orders of the Court**.*

*20. **4 weeks are granted to the respondent to purge the contempt, failing which respondent No. 1 shall file an affidavit as to why he should not be punished under the Contempt of Courts Act within 2 weeks thereafter**.*

xxx xxx xxx"

(Emphasis Supplied)

15. The aforesaid order dated 5th December, 2023 was assailed by way of

an appeal bearing *CONT.APP(C) 8/2024*. However, the said appeal was dismissed by the learned Division Bench vide order dated 22nd January, 2024, as being not maintainable.

16. It is submitted that despite the aforesaid order, the respondent no. 1 has not made any attempt to purge the contempt. No apology has been tendered by the respondent no. 1 for the non-compliances, rather, the respondent, has justified his action.

17. Attention of this Court has been drawn to the MOU dated 21st December, 2019 between the parties, particularly to Paras 3 and 4 of the said MOU, to submit that it was entirely the responsibility of the respondent no. 1 herein to pay off the entire loan to the bank. It is submitted that the respondent no. 1 took over the assets of the respondent no. 2-company in terms of the MOU, but has not discharged his liability.

18. On behalf of the petitioners, the following judgments have been relied upon:

(i) ***Rama Narang Versus Ramesh Narang and Another, (2009) 16 SCC 126***

(ii) ***Roshan Sam Boyce Versus B.R. Cotton Mills Ltd. and Others, (1990) 2 SCC 636***

(iii) ***Hindustan Lever Limited Versus Cavin Kare Limited and Ors., 2006 SCC OnLine Cal 47***

(iv) **Maruti Udyog Limited Versus Mahinder C. Mehta and Others, (2007) 13 SCC 220**

(v) ***Meghmala and Others Versus G. Narasimha Reddy and Others, (2010) 8 SCC 383***

(vi) ***Noorali Babul Thanewala Versus K.M.M. Shetty and Others, (1990)***

1 SCC 259

(vii) ***Pravin C. Shah Vs. K.A. Mohd. Ali. And Another, (2001) 8 SCC 650***

(viii) ***M.C. Mehta Versus Union of India & Ors., (2003) 5 SCC 376***

(ix) ***Daiichi Sankyo Company Limited Versus Oscar Investments Limited and Others, (2023) 7 SCC 641***

(x) ***M/s Indo-Keniyan Industrial Enterprises Versus M/s Metal Forgings (P) Limited, 1986 SCC OnLine Del 136***

(xi) **Pearey Lal & Sons Pvt. Ltd. Vs. Dabur India Ltd**., ***2005 SCC OnLine Del 378***

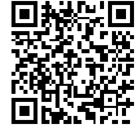
(xii) ***Phulo Devi. Vs. Naresh Karotiya & Anr. Ors., Order dated 04.07.2022 in CONT.CAS(C) 243/2022***

(xiii) ***Dr. Hans Raj and Another Versus Anand Kamal Goel, 2023 SCC OnLine Del 2426***

(xiv) ***Industrial Enterprises Vs. Metal Forgings (P) Limited, MANU/DE/0200/1986***

19. Per contra, learned counsel appearing for respondent no. 1 submits that the respondent no. 1 has the highest regard for the orders passed by this Court and has not intentionally or willfully violated any orders passed by this Court or by the learned Arbitrator. It is submitted that the non-payment of EMIs of the bank was not a willful disobedience, but due to financial inability and constraints faced by the respondent no. 1. Further, execution proceedings in this regard, are already pending.

20. It is submitted that respondent no. 2-compnay is facing Corporate Insolvency Resolution Process ("CIRP"). Once the company went into insolvency, the arbitration proceedings stood terminated. Further, a Resolution Professional is looking after the management and day to day



affairs of the company. Thus, the present petition is not maintainable.

21. It is further submitted that the Flat Bed Printing Machine had already been sold on 18th February, 2020, before passing of the order dated 11th June, 2020 by this Court.

22. It is further submitted that the respondent no. 1 has returned the laptop, computers, etc., to the Resolution Professional, which has been duly acknowledged by the Resolution Professional.

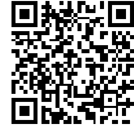
23. Learned counsel appearing for respondent no. 1 further tenders unconditional apology on behalf of respondent no. 1, to this Court.

24. In rejoinder, learned counsel appearing for the petitioners submits that the CIRP proceedings commenced only on 18th June, 2021, whereas, the present petition was filed 13th January, 2021 prior to the CIRP proceedings. Thus, the respondent no. 1 is guilty of violation of the orders, prior to the commencement of the CIRP proceedings.

25. It is further submitted by learned counsel appearing for the petitioners that the respondent no. 1 has already been held guilty of contempt vide order dated 5th December, 2023. The respondent has not shown any remorse for his non-compliance and has rather given the unconditional apology at a very belated stage.

26. I have heard learned counsels for the parties and have perused the record.

27. At the outset, it is to be noted that to punish a contemnor, the disobedience should be willful. Element of willingness is an indispensable requirement to hold a party guilty of contempt. It has been held time and again that contempt jurisdiction is a powerful weapon in the hands of the Courts, and the said proceedings being quasi-criminal in nature, the standard



of proof required in these proceedings, is beyond all reasonable doubt. Thus, unless a Court is satisfied beyond a reasonable doubt, the jurisdiction under the Contempt of Courts Act, 1971, ought not to be exercised. Courts have to adopt a cautionary approach and a sentence for contempt cannot be imposed, on mere probabilities. The act has to be committed willfully, intentionally, deliberately, and knowingly, before a party can be proceeded under the Contempt of Courts Act. Thus, if the disobedience of an order is the result of some compelling circumstances, then, a party cannot be held guilty of contempt.

28. Delineating the contours for initiating civil contempt petition, in the case of ***Hukum Chand Deswal Versus Satish Raj Deswal***[1], Supreme Court has held as follows:

> *"xxx xxx xxx*
>
> *20. At the outset, we must advert to the contours delineated by this Court for initiating civil contempt action in Ram Kishan v. Tarun Bajaj [Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204 : (2015) 3 SCC (L&S) 311] . In paras 11, 12 and 15 of the reported decision, this Court noted thus : (SCC pp. 209-211)*
>
> > *"11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined.* ***Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all***

[1] *(2021) 13 SCC 166*

reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. *(Vide V.G. Nigam v. Kedar Nath Gupta [V.G. Nigam v. Kedar Nath Gupta, (1992) 4 SCC 697 : 1993 SCC (L&S) 202] , Chhotu Ram v. Urvashi Gulati [Chhotu Ram v. Urvashi Gulati, (2001) 7 SCC 530 : 2001 SCC (L&S) 1196] , Anil Ratan Sarkar v. Hirak Ghosh [Anil Ratan Sarkar v. Hirak Ghosh, (2002) 4 SCC 21] , Bank of Baroda v. Sadruddin Hasan Daya [Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360] , Sahdeo v. State of U.P. [Sahdeo v. State of U.P., (2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451] and National Fertilizers Ltd. v. Tuncay Alankus [National Fertilizers Ltd. v. Tuncay Alankus, (2013) 9 SCC 600 : (2013) 4 SCC (Civ) 481 : (2014) 1 SCC (Cri) 172] .)*

12. ***Thus, in order to punish a contemnor, it has to be established that disobedience of the order is "wilful". The word "wilful" introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. "Wilful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a 'bad purpose or without justifiable excuse or stubbornly, obstinately or perversely'. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. 'Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct***.' *(Vide S. Sundaram Pillai v. V.R. Pattabiraman [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591] , Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao [Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao, (1989) 4 SCC 255] , Niaz Mohammad v. State of Haryana [Niaz Mohammad v. State of Haryana, (1994) 6 SCC 332] , Chordia*

Automobiles v. S. Moosa [Chordia Automobiles v. S. Moosa, (2000) 3 SCC 282] , Ashok Paper Kamgar Union v. Dharam Godha [Ashok Paper Kamgar Union v. Dharam Godha, (2003) 11 SCC 1] , State of Orissa v. Mohd. Illiyas [State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275 : 2006 SCC (L&S) 122] and Uniworth Textiles Ltd. v. CCE [Uniworth Textiles Ltd. v. CCE, (2013) 9 SCC 753] .)

15. ***It is well-settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act****. [See Sushila Raje Holkar v. Anil Kak [Sushila Raje Holkar v. Anil Kak, (2008) 14 SCC 392 : (2009) 2 SCC (L&S) 497] and Three Cheers Entertainment (P) Ltd. v. CESC Ltd. [Three Cheers Entertainment (P) Ltd. v. CESC Ltd., (2008) 16 SCC 592]]"*

21. Similarly, in R.N. Dey v. Bhagyabati Pramanik [R.N. Dey v. Bhagyabati Pramanik, (2000) 4 SCC 400] , this Court expounded in para 7 as follows : (SCC p. 404)

"7. ***We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemnor and the court.*** *It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the first appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is a nullity. In such a situation, as there was no wilful or deliberate disobedience of*

the order, the initiation of contempt proceedings was wholly unjustified."

xxx xxx xxx"

(Emphasis Supplied)

29. Similarly, holding that contempt must be established beyond reasonable doubt, Supreme Court in the case of ***Mrityunjoy Das and Another Versus Sayed Hasibur Rahaman and Others***[2], has held as follows:

"xxx xxx xxx

14. The other aspect of the matter ought also to be noticed at this juncture, viz., the burden and standard of proof. The common English phrase "he who asserts must prove" has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the "standard of proof", be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt*. The observations of Lord Denning in Bramblevale Ltd. Re [(1969) 3 All ER 1062 (CA)] , lend support to the aforesaid. Lord Denning in Re Bramblevale [(1969) 3 All ER 1062 (CA)] stated: (All ER pp. 1063H and 1064B)*

> *"A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence…. Where there are two equally consistent possibilities open to the court, it is not right to hold that the offence is proved beyond reasonable doubt."*

***15.** In this context, the observations of the Calcutta High Court in Archana Guha v. Ranjit Guha Neogi [(1989) 2 CHN 252 (Cal)] in which one of us was a party (Banerjee, J.) seem to be rather apposite and we do lend credence to the same and thus record our concurrence therewith.*

***16.** In Aligarh Municipal Board v. Ekka Tonga Mazdoor*

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[2] *(2001) 3 SCC 739*

Union [(1970) 3 SCC 98 : 1970 SCC (Cri) 570] ***this Court in no uncertain terms stated that in order to bring home a charge of contempt of court for disobeying orders of courts, those who assert that the alleged contemners had knowledge of the order must prove this fact beyond reasonable doubt. This Court went on to observe that in case of doubt, the benefit ought to go to the person charged****.*

17. *In a similar vein in V.G. Nigam v. Kedar Nath Gupta [(1992) 4 SCC 697 : 1993 SCC (L&S) 202 : (1993) 23 ATC 400]* ***this Court stated it would be rather hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities****.*

xxx xxx xxx"

(Emphasis Supplied)

30. Considering the aforesaid law, this Court has to adjudicate whether in the present case it has been established without any element of doubt that the respondents are guilty of contempt. In this regard, it would be apposite to refer to the additional affidavit filed on behalf of respondent no. 1, relevant portions of which are extracted as below:

"xxx xxx xxx

4. ***I say that I was unable to discharge the EMIs' as directed by the Order dated 01.07.2020 as I had invested all my savings and investments in the Respondent No.2 Company. The non-payment of EMIs of the Bank is not a willful disobedience of the order of the Ld. Sole Arbitrator but was due to financial inability and constraints for the reasons stated hereunder****.*

xxx xxx xxx

7. I say that with bonafide intent, as a director of the Respondent No.2 Company, I apportioned the sum of Rs.3,08,51,667/- received from debtors towards repayment of the bank loan as I was intending to fulfill my part of obligations as stated in the Memorandum of Understanding dated 21.12.2019, however, in the meantime, dispute arose between me and the Petitioners w.r.t. fulfillment of obligations of respective parties stated therein.

8. ***I say that due to the said dispute, I was unable to operate the bank accounts of the Respondent No.2 Company as 2 signatories was required to operate the bank account and new sanctioned limit in the name of the Respondent No.2 Company as agreed between the***

parties was never approved by the bank due to the said dispute*.*

9. ***I say that for managing and controlling the affairs of the Respondent No. 2 Company, solely, I invested my life savings in the Respondent No. 2 Company however, due to the said dispute, despite investing more than Rs. 4.5 Crores in the Respondent No. 2 Company, I was unable to carry on the affairs of the Respondent No. 2 Company****.*

10. ***I say that since I was unable to carry on the affairs of the Respondent No.2 Company effectively and efficiently due to the said dispute, one of the Operational Creditors of the Respondent No.2 Company filed a petition bearing No. CP (IB) No.99/CHD/HRY/2020 under section 9 of Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal, Chandigarh. On 18.06.2021, the National Company Law Tribunal, Chandigarh admitted the said petition and initiated the Corporate Insolvency Resolution Process against the Respondent No.2 Company****.*

11. I say that the Respondent No.2 Company issued 94 (Ninety Fours) cheques to various vendors/suppliers of the Respondent No.2 total amounting to Rs.1,11,42,248/- towards repayment of liability of the Respondent No.2 Company. I say that I had signed the said cheques with the bonafide believe to rub the affairs of the Respondent No.2 Company, however, due to the said dispute, the affairs of the Respondent No.2 Company could be managed and operated by me and as a result of which the said cheques got dishonored. At present, I am facing the criminal trial under section 138 of Negotiable Instruments Act, 1881 across India in several matters because the Respondent No 2 Company under Corporate Insolvency Resolution Process and moratorium under section 14 of I&B Code, 2016 is applicable qua the Respondent No.2 Company. I have even paid the sum of Rs.9.5 lacs (approx.) from my own sources to some vendors/suppliers so that they won't initiate criminal prosecution under section 138 of N.I. Act, 1881. Details of pending section 138 complaints is annexed herewith as ***ANNEXURE-R1****.*

12. ***I say that because of pending section 138 complaints, I am facing immense hardship and running pillar to post to defend myself in these pending section 138 complaints. I had signed the said cheques on behalf of the Respondent No.2 Company with bonafide intent to run the affairs of the Respondent No.2 Company, however, due to the said dispute, I have lost everything. I have lost my lifelong savings and investments. Presently, I am facing several section 138 complaints along with other litigations****.*

13. I say that I am a shareholder and erstwhile director of Frisco Fab Dyeing and Printing Pvt. Ltd. (for short "Frisco"). Frisco was also engaged in printing business. Apart from investing the aforesaid funds in the Respondent No.2 Company, ***I had also invested substantial funds in the Respondent No.2 through Frisco by advancing loans against machinery and by supply materials. However, due to the said dispute, I was unable to run the affairs of the Respondent No. 2 Company and consequently, suffered losses****.*

14. I say that during the CIRP of the Respondent No.2 Company, Frisco filed its claim of Rs.8,08,47,264/- in FORM B with the Resolution Professional and the same was acknowledged by the Resolution professional in the minutes of 5th meeting of COC dated 10.09.2021. Copy of the minutes of 5th meeting of COC dated 10.09.2021 is annexed herewith as **ANNEXURE- R2***.*

15. I say that even in Frisco, I am facing litigation as the other shareholder has filed an oppression and mismanagement petition before the National Company Law Tribunal and the same is pending adjudication. Due to the dispute Frisco is not doing any business operations.

16. ***I say that because of the said dispute and circumstances occurred due to the same, I have reached at the verge of bankruptcy. All my assets, savings and investments have been disposed of. At present, I do not own any assets, however, my liabilities have been increased manifolds****.*

17. ***I say that I have always respected the majesty of law, never committed willful disobedience of any order or judgment of any court of law.*** *I have no criminal antecedents except the FIR registered by the Petitioner as a counter blast to FIR registered at my complaint before the Police Station Gadpuri Palwal, Haryana.*

18. I say that when I had the funds, I reduced the exposure of the bank from Rs.9,84,69,656/- to Rs.5,85,67,989/-, however, due to financial inability, I miserably failed to clear the bank EMIs' and could not comply with the direction of the Ld. Arbitrator passed on 01.07.2020.1 say that nonpayment of EMIs' were not willful rather it was because of unintentional and unanticipated circumstances as stated above.

19. ***I say that as far as the sale of Flat Bed Printing Machine is concerned, it was sold on 18.02.2020 and proper invoice was raised. The Respondent no.2 Company even charged and deposited the requisite GST with the department on the sale of the said, machine. The said Machine was sold before the passing of the order dated 11.06.2020 by this Hon'ble Court and order dated 17.06.2020 by the Ld. Sole Arbitrator****.*

20. __I say that I have returned the laptop, computers, cameras, account server and books of accounts as recorded in the minutes of 2nd meeting of Committee of Creditors dated 10.08.2021 to the Resolution Professional and the same has been acknowledged by the Resolution Professional vide email dated 21-04-2024. Copy of the email dated 21.04.2024 sent by Resolution Professional is annexed herewith as ANNEXURE-R3.__

xxx xxx xxx"

(Emphasis Supplied)

31. Reading of the aforesaid additional affidavit clearly shows that the respondent no. 1 has been unable to pay the EMIs of the bank on account of financial inability and constraints, which have arisen due to the various reasons, as elucidated in the said additional affidavit.

32. This Court also takes note of the categorical submission made on behalf of respondent no. 1 that the sale of the Flat Bed Printing Machine was done on 18th February, 2020, much prior to the passing of the order dated 11th June, 2020 by this Court in *OMP (I) (Comm.) No. 127/2020*. Thus, the sale of the said machine cannot tantamount to contempt of any order passed by this Court or the learned Arbitrator.

33. This Court also takes note of the submissions made on behalf of the respondent in the affidavit dated 2nd March, 2024, wherein, it has been stated as follows:

"xxx xxx xxx

17.__That it is relevant to mention that during pendency of the proceedings before ld. Arbitrator, a petition under Section 9 of the Insolvency and Bankruptcy Code, (IBC), 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 filed by Operational Creditor and was admitted vide order dated 18th June, 2021 passed by the ld. NCLT, Chandigarh Bench. Accordingly, moratorium became operative under Section 14 of the IBC and prohibitions stood imposed. An interim Resolution Professional (IRP) was also appointed who has taken steps in consonance with provisions of IBC__. Copy of the order

dated 18.06.2021 is annexed as ***Annexure-III****.*

*18.****That in view of order dated 18.06.2021 of the NCLT, as stated above the ld. Sole Arbitrator also vide order dated 13.07.2021 adjourned the proceedings sine die with the liberty to revive the proceedings as and when the moratorium is lifted. No final award has been passed on merits of the claim till date****. Copy of the order dated 13.07.2021 is annexed as* ***Annexure-IV.***

l9.That in the present petition the petitioners have concealed the facts that the ***petitioners have already filed their claim before the Resolution Professional appointed by the Hon'ble NCLT, Chandigarh Bench*** *vide same order dated 18.06.2021. The petitioners deliberately suppressed this fact in order to continue their persecution against the respondent no. 1 by making the respondent no. 1 to pay the installments of the loan and money in the account of the respondent no. 2 despite the fact that the respondent no. 2 is undergoing CIRP and the claim of the petitioners have also been filed.*

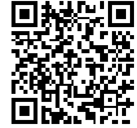
*20.****That the South Indian Bank to which the property of the petitioners is mortgaged as collateral security, the said Bank has also filed its claim before he RP in the meeting with the Committee of Creditors****.*

*21.****It is pertinent to mention that since the respondent no. 2 company is undergoing CIRP and all assets and managements of the respondent no. 2 company are with the RP. The liability of the loan installments in form of claim submitted by the South Indian Bank is also now with the RP as such the respondent no. I has no control over the assets, management and liabilities of the respondent no. 2****.*

xxx xxx xxx"

(Emphasis Supplied)

34. Reading of the aforesaid clearly shows that since the respondent no. 2-company is undergoing CIRP, all the assets and management of the respondent no. 2-company are with the Resolution Professional. Further, the liability of loan installments, in the form of claim submitted by the South Indian Bank, is also with the Resolution Professional. Thus, the respondent no. 1 has no control over the assets, management and liabilities of respondent no. 2. Thus, it is manifest that the respondent no. 1 has been unable to pay the EMIs to the bank due to his financial inability and



constraints, due to circumstances, as brought forth before this Court.

35. As discussed hereinabove, in order to establish contempt, there must be intentional and deliberate attempt to consciously violate an order. However, in the facts and circumstances of the present case, this Court is satisfied that the present is not a case where it can conclusively be said that respondents have willfully and deliberately disobeyed the order passed by this Court and the learned Arbitral Tribunal.

36. Considering the financial inability of a party on account of which the order in question could not be complied with, while dismissing the contempt petition, a Coordinate Bench of this Court in the case of ***National Agricultural Corp. Marketing Versus Reliance Polycrete Ltd.***[3], has held as follows:

> *"xxx xxx xxx*
>
> ***3. Counsel for the contemnor argued that there was no deliberate non-compliance of the order and it was financial inability of the contemnor due to which order could not be complied with and because of this, the contemnor cannot be punished. He relied on Indian Overseas Bank v. Lalit Kumar Aggarwal, (2003) Company Cases 799 and R & N Dey v. Bhagyabati Pramanik, (2000) 4 SCC 400****. The Supreme Court in R & N Dey (supra) had observed as under:*
>
> *"**We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of the Court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the Court should exercise such jurisdiction as contempt is between a contemnor and the Court**. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the first appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceedings, appellants cannot be directed to pay the compensation amount which they are*

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[3] *2009 SCC OnLine Del 3055*

disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that the claimants are entitled to recover the amount of compensation as awarded by the trial Court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is a nullity. ***In such a situation, as there was no wilful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified****."*

4. *I consider that in this case the contention of the respondent/contemnor has to be believed on the face of it since the petitioner has not brought to notice of this Court any fact contrary to the contention of the contemnor showing that the contemnor was having sufficient liquidity to furnish to the bank or had property/security with 25% amount which he could have furnished to the bank.* ***It does not seem to be a case of the deliberate defiance of the order of the Court. The Contempt Petition is hereby dismissed****.*

Contempt Petition dismissed.

xxx xxx xxx"

(Emphasis Supplied)

37. Similarly, outlining the elements of contempt, which excludes causal, accidental, bonafide or unintentional acts or genuine inability, a Coordinate Bench of this Court in the case of ***M/s Kuehne + Nagel Pvt. Ltd. Versus Prem Singhee***[4], has held as follows:

"xxx xxx xxx

7. Having heard the learned counsels for the parties and on perusal of the material on the record, ***it is well ordained in law that the CC Act envisages a civil contempt which should demonstrate a wilful disobedience of a decision of the Court. Avoiding long academic discussion, in the cited case of U.N. Bora v. Assam Roller Flour Mills Assn. MANU/SC/0984/2021: 2021:INSC:671 : (2022) 1 SCC 101, after examining a plethora of case law3 on the subject, it was reiterated that****:*

(i) It should be shown that there was due knowledge of the order or directions and that the disobedience is a deliberate, conscious and intentional act.

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[4] *2023 SCC OnLine Del 8591*

(ii) When two views are possible, the element of wilfulness vanishes as it involves a mental element.

(iii) Since the proceedings are quasi-criminal in nature, what is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature.

(iv) when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971.

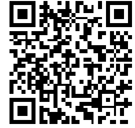
*8. In a subsequent decision by the Supreme Court **Urban Infrastructure Real Estate Fund v. Dharmesh S. Jain** MANU/SC/0302/2022 : 2022:INSC:296 : (2022) 6 SCC 662 at page 682, the following observations were approved:*

*"**This Court in the case of R.N. Dey v. Bhagyabati Pramanik [R.N. Dey v. Bhagyabati Pramanik, MANU/SC/0286/2000 : (2000) 4 SCC 400], held that the weapon of initiating contempt proceedings could not be used for execution of a decree or implementation of an order. That is, a court should not invoke contempt jurisdiction, where alternate remedies are available to secure the terms of an order. We are mindful of the fact that contempt proceedings should not be of the nature of 'execution proceedings in disguise.**"*

*9. Without further ado, **in order to punish a contemnor, it has to be established that disobedience of the order is "wilful". It is held in umpteen number of cases that the word "wilful" introduces a mental element means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with malice or without a justifiable excuse or stubbornly, obstinately or perversely. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct**."*

xxx xxx xxx"

(Emphasis Supplied)



38. Having given thoughtful consideration to the facts and circumstances of the present case, and considering the material on record, it cannot be said that there is any willful and deliberate disobedience by the respondents of the order passed by this Court and the learned Arbitrator. No merit is found in the present petition. Accordingly, notice to show cause as to why the respondent no. 1 should not be punished under the Contempt of Courts Act, is hereby discharged.

39. The present petition is dismissed, in the aforesaid terms.

(MINI PUSHKARNA)
JUDGE

JULY 3, 2024
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