IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.302 – MA 5 of 2017 in TP 115 of 2016
With
ITEM No. 303 - Cont A 6 of 2017 in TP 115 of 2016

Order under Section 425 of Co. Act, 2013

IN THE MATTER OF:

Kumar Jivanlal Patel (Makadia) .....**Applicant**
V/s
Patel Oils & Chemicals Pvt Ltd & Ors .....**Respondent**

Order delivered on: 17/01/2025

Coram:
Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:
For the Applicant :
For the Respondent :

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in the open Court, vide separate sheet.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD

Contempt Application No. 6/2017
In
TP No. 115/634A/NCLT/ AHM/ 2016
In
CA No. 90/634A/CLB/MB/2015

AND

Miscellaneous Application No. 5/2017
In
TP No. 115/634A/NCLT/ AHM/ 2016
In
CA No. 90/634A/CLB/MB/2015

(Filed under, Section 425 Companies Act, 2013 and Section 634A of the Companies Act, 1956).

In the matter of **M/s Patel Oils and Chemicals Private Limited**

Kumar Jivanlal Patel (Makadia)
S/o JivanlalG.Patel (Makadia)
405/1 G.I.D.C. New Colony Opp.
Lions School, Ankleshwar 393002

.... Applicant

VERSUS

1. **Patel Oils & Chemicals Private Limited,**
   Having registered Address at:
   6012 G.I.D.C. Estate Ankleshwar 393002

2. **Jitendra Mukundrai Patel,**
   S/o Mukundrai M. Patel
   28 Divya Darshan, New Colony,
   G.I.D.C. Ankleshwar- 393002

3. **Sumanrai Mukundrai Patel,**
S/o Mukundrai M. Patel,
1 AGF, Jalkamal Co.Op. Hsg.
Society Ltd. New colony,
G.I.D.C. Ankleshwar- 393002

4. **Monaben Sumanbhai Patel,**
W/O Sumanbhai M Patel
Plot No.503 Jalkamal Society No.2
Flat AGF 1 New Colony
G.I.D.C. Ankleshwar- 390332

5. **S. M. Patel HUF,**
Plot No.503 Jalkamal Society No.2
Flat AGF 1 New Colony
G.I.D.C. Ankleshwar 390332

6. **Ramaben Gautambhai Patel,**
W/O Dr. Gautambhai M Patel
1784/A-1 Panchil Society,
Sardar Nagar Bhavnagar- 364002

7. **Vivek Gautambhai Patel,**
S/o Gautambhai M Patel
1784/A-1 Panchil Society,
Sardar Nagar Bhavnagar- 364002

8. **G. M. Patel HUF,**
1784/A-1 Panchil Society,
Sardar Nagar Bhavnagar- 364002

.... Respondents

Order Pronounced on 17.01.2025

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

For Applicant : Mr. Kunjal Dalal, PCS
For Respondents : Mr. Jainish Shah, Adv. For R-2.

O R D E R

Contempt Application No. 6 of 2017

1. The Contempt Application 6/2017 in TP No. 115/634A/NCLT/ AHM/ 2016 CA No. 90/634A/CLB/ MB/2015 has been filed by the Applicant under Section 425 *Companies Act, 2013* and Section 634A of the Companies Act, 1956 seeking relief as follows; -

a. *Initiate appropriate contempt proceedings against Respondent Number 2 to 5 and pass appropriate order punishing the said respondents for contempt.*

b. *Pass any other order that This Hon'ble Tribunal deems fit.*

2. Facts of the Case are as follows:-

I. That the Applicant is filing present contempt petition in light of wilful non-compliance of this Tribunals order dated 20.01.2017.

II. The Applicant had filed Company Application No. 90/634A/CLB/MB/2015 before the Company Law Board, Mumbai Bench under section 634A of The Companies Act 1956 for execution/

implementation of Company Law Board order dated 17.11.2014 in Company petition Number 59 of 2012 under section 397- 398 of The Companies Act 2013.

III. The matter was then transferred to National Company Law Tribunal, Ahmedabad Bench and was registered vide TP No.1115/634A/NCLT/ AHM/2016 (New) and was listed for hearing for time to time.

IV. During the course of hearing this Tribunal passed an order dated 20.01.2017 inter-alia directing the respondents as under:

i. That instead of initiating contempt proceedings against the respondents, as an alternate, it is hereby ordered that the respondents shall pay a sum of Rs.10,000/- (Rupees Ten Thousand Only) to the applicant as cost of litigation. It is expected that this fine/cost may prevent the respondents for future non-compliance. I have Taken this view following the ratio laid down by Hon'ble Gujarat High Court in the case of Jitesh Trading Company v/s Gita Fabrics Private

limited (1996) 86 Comp Case 453 Guj. Order dated 19.09.1995.

ii. *That it is hereby ordered that the respondents shall not alienate or deal with the assets of Respondent Number 1 Company without proper notice to the petitioner. The Respondents shall strictly abide the aforesaid direction while selling the assets by giving an opportunity to the petitioner to match the offer of expected consideration.*

iii. *That the Applicant/petitioner shall be supplied a copy of the Register of members being lawful right enshrined under the Act within 15 days on receipt of this order.*

iv. *That on fulfilment of the aforesaid directions, the respondent shall furnish a compliance report to the Assistant Registrar/ Bench Officer NCLT, Ahmedabad immediately thereafter.*

V. The respondents paid the fees/cost Rs.10,000/- to the petitioners however in spite of specific order the respondents, entered in to agreement for transfer of company's immovable assets and

accepted consideration of Rs.1,50,00,000/- without notice to the Petitioner or giving an opportunity to the Petitioner to match the offer of expected consideration. The agreement has been entered in to at the back of petitioners and the petitioners came to know only form the Directors report dated 01.09.2017 received along with Notice of Annual General Meeting for year 31.03.2017. The extract of Board report is reproduced hereunder for ready reference.

> *MATERIAL CHANGES AND COMMITMENTS IF ANY AFFECTING THE FINANCIAL POSITION OF THE COMPANY WHICH HAVE OCCURRED BETWEEN THE END OF THE FINANCIAL YEAR OF THE COMPANY TO WHICH THE FINANCIAL STATEMENTS RELATE AND THE DATE OF THE REPORT.*
>
> *During the year under the review company has received consideration amounting to Rs. 1,50,00,000/- in furtherance of Agreement to transfer the Company's immovable properties.*

VI. The respondents have thus entered into agreement for transfer of Respondent No.1 Company immovable assets without providing

notice to the petitioners nor an opportunity to match the expected consideration was given to the petitioners in terms of the order of this NCLT.

VII. The respondents have even not supplied copy of register of members to the petitioners.

VIII. The respondents have therefore committed contempt of Honorable NCLT order dated 20.01.2017 (a) specifically directing them to give proper notice before selling the assets and giving opportunity to the petitioners to match the offer of expected consideration and (b) Not providing copy of Register of Members to the Petitioner which has cause irreparable harm to the petitioner.

3. The Respondent no. 2 has filed its reply on 24.01.2018 Vide inward dairy no. D706 and stated the following :-

i. The respondents state and submit that the respondents have not acted in contraventions of the directions issued by this Tribunal and have complied with the directions of this Tribunal. The respondents state and submit that this Tribunal

vide its order dated 20.01.2017 has stated in direction at Para 6(ii) that the respondents herein shall not alienate or deal with the asset of the Company without notice to the petitioner therein and shall give an opportunity to the petitioner to match the offer of expected consideration.

ii. At the outset, the respondents state and submit that the applicant has made false averments in its application for initiation of contempt proceedings and has not approached this Tribunal with clean hands and therefore, the present application is liable to be dismissed in limine. It is submitted that the applicant has wrongly stated in its application that the applicant came to know about the agreement of the transfer of the property only by Director's Report dated 01.09.2017 along with notice of AGM for the year ending 31.03.2017. The respondents state and submit that the same is absolutely false and the petitioner was aware that the respondents are

trying to sell the property when the applicant had received the letter dated 22.07.2016 from the respondents herein and the applicant had in fact sent reply dated 29.07.2016 to the said letter wherein the applicant made no offer but had rather questioned the respondents intent for selling the said property. It is submitted that the said suppression on the part of the applicant clearly shows the mala fide intentions of the applicant and therefore, the present application is liable to be dismissed on this ground alone.

iii. The respondents submit that the respondent No.1 is the owner of the property being 5000 sq. meter land at 6012, GIDC Ankleshwar and admeasuring 3200 sq. feet situated thereon (hereinafter referred to as the "said property"). It is submitted that as there was huge liabilities against the creditors of the respondent No.1 Company, the respondents during their meeting of Board of Directors of the respondent No.1 Company had

decided to sell the said property in order to reduce its liabilities. In view thereof, the respondents had vide letter dated 22.07.2016 called for offers from all its shareholders including the applicant herein to purchase the said property. It was specifically stated in the said letter that all shareholders can submit their bid in sealed cover on or before 29.07.2016 and it was also stated that in case the offer is not received before the said date then the respondent No.1 Company shall dispose of the said property accordingly.

iv. The respondents state and submit that the petitioner herein did not make any offer for purchasing the said property but had rather given a frivolous reply dated 29.07.2016 stating that the respondent No.1 need not sell the said property and had rather called upon the respondents herein to provide reasons for such sale of the property. The petitioner herein has stated in its notice that the sale of the said property would be

violative of the order dated 17.11.2014 of the Company Law Board (CLB) and had asked the respondents herein not to initiate any actions for sale of the property.

v. The respondents state and submit that sufficient opportunity was given to the petitioner to purchase the property and as per the directions of this Tribunal; the petitioner was to be given an opportunity to purchase the property for expected price. The respondents have duly complied with the said condition by providing reasonable opportunity to the applicant to purchase the said property but the applicant for its ulterior motives did not make any offer and threatened the respondents herein not to sell the said property. It is submitted that it was only because the petitioner herein showed no inclination for purchasing the said property, the respondents thereafter entered into agreement to transfer the said property to third party. It is submitted that

the respondents herein entered into a Memorandum of Understanding (MOU) with one Shree Ganesh Remedies Pvt. Ltd. on 22.08.2016 for the sale of the said property. It is submitted that the applicant was always aware about the said agreement but had taken no action till date for making offer for purchase of the said property which clearly shows the mala-fide intentions of the applicant.

vi. The respondents state and submit that the present application is nothing but an afterthought merely to harass the respondents herein and to ruin the reputation and financial condition of the respondent No.1 Company and therefore. the present application is liable to be dismissed from the outset.

vii. It may be pointed out that during the hearing of the main matter itself, the applicant was aware of the said order but for reasons best known to the applicant, the applicant did not bring the same to

the notice of this Tribunal during the hearing of the said matter. It is further submitted that the agreement for transfer of the said property was made prior to the order dated 20.01.2017 and therefore the respondents have not done any actions in contravention of the order dated 20.01.2017 passed by this Tribunal. It is submitted that the present application is nothing but an afterthought and no contempt of order dated 20.01.2017 is made out from the averment in the application.

4. The Applicant herein has filed Rejoinder to the reply of Respondents on 19.01.2021 Vide inward dairy no. 683 and stated the following :-

i. Counsel for the Applicant stated that With respect to paragraph No.1 of reply by respondent submitted that the respondent have admitted the contempt and prayed for unconditional apology however the conduct of the respondent do not deserve any apology since they have intentionally

violated the order and also earlier order of Company Law Board dated 17.11.2014 in C.P 59 of 2012.

ii. The statements made in paragraph No. 2 of reply by respondents are denied. The respondents have made a false statement on affidavit that they have complied with the directions without clarifying how the compliance has been made. It has been pointed earlier that the assets of respondent No. 1 company have been alienated after date of order in gross violation of directions. The respondents should also be punished for making false statement on affidavit.

iii. The statements made in paragraph No. 3 of reply by respondents are denied. The statements have been made to mislead and misguide this Tribunal. The correspondence made during year 2016, do not amount to compliance of directions made in order dated 20.01.2017. It is pertinent to note that members resolution dated 15.11.2011

authorizing the Board of Directors to sell the assets of respondent No. 1 company has already been set aside by Company Law Board- Mumbai Bench vide its order dated 17.11.2014 in C.P. 59 of 2012. The assets have been alienated not only without compliance of directions but also without authority of members.

iv. The statements made in paragraph No. 4 of reply by respondents are denied. It is pertinent to note that the liabilities of respondent No. 1 company categorized as Long term Borrowings in Balance sheet dated 31.03.2015 was only towards its directors as already clarified in our reply dated 29.07.2016 (refer page 11 of rely by respondents). It is submitted that respondent cannot be allowed to violate the judicial orders on grounds that the respondent company has liabilities.

v. The statements in paragraph No. 5 of reply by respondents are an admission of fact that the petitioners have brought to notice of respondent

that any action to sale the assets of respondent No. 1 company shall be in violation of orders dated 17.11.2014. The respondents intentionally violated the judicial orders in spite of being aware of situation.

vi. The statements made in paragraph No. 6 of reply by respondents are denied. The MOU dated 22.08.2016 is in itself violative of orders of Honorable Company Law Board dated 17.11.2014. Besides the said MOU do not authorize the respondents to alienate the assets of Respondent No.1 company in gross violations of directions in order dated 20.01.2017. It is repeated that the process of transfer / alienation of Respondent No. 1 assets was carried out in 2018, in gross violations of directions made in order dated 20.01.2017.

vii. The statements made in paragraph No. 7 of reply by respondents do not deserve any comments except that the respondents have themselves

ruined their reputation by gross violation of Directions. The present contempt application cannot be dismissed on the grounds that it will ruin the reputation of respondents or that it was made to harass the respondents and to ruin their reputation.

viii. The statements made in paragraph No. 8 of reply by respondent are denied. The respondent has made a false statement on affidavit that agreement for transfer of property was made prior to order dated 20.01.2017. It is pertinent to note that the respondents have not produced any agreement or GIDC permission for transfer prior to date of order.

5. The matter was listed for hearing on 19.10.2023 wherein Ld. Counsel, for the Respondent No.1 & 2 appeared and submitted that order dated 20.01.2017 for the direction 6(ii) has not been violated by the respondent – company. The respondent no. 1 has only entered into the MOU on 26.08.2016 prior to the

passing of the order for the sale of the assets. No sale deed has been executed till date. Hence, the Respondent No.2 was directed to file an affidavit mentioning status of the assets of the Respondent No. 1 as on date qua the ownership as well as the possession of the same. If any steps have been taken by the respondent – Company after passing of the order for alienation in any manner. The order of this Tribunal dated 19.10.2023 records as under:-

> *"The learned counsel, Mr. Jainish Shah appeared for the respondent and submitted that order dated 20.01.2017 for the direction 6(II) has not been violated by the respondent – company. The respondent no. 1 has only entered into the MOU on 26.08.2016 prior to the passing of the order for the sale of the assets. No sale deed has been executed till date. Let respondent to file an affidavit mentioning status of the assets of the respondent no. 1 as on today qua the ownership as well as the possession of the same. If any steps have been taken by the respondent – Company after passing of the order for alienation in any manner."*

6. In compliance with the order dated 19.10.2023 as well as extended order dated 01.02.2024, an additional affidavit dated 15.02.2024 was filed by the Respondent No. 2 vide inward diary No. 1518 on 21.02.2024.

7. The Respondent No.2 in his additional affidavit dated 15.02.2024 filed vide inward diary No. 1518 on 21.02.2024 in compliance of order dated 19.10.2023 to place on record the status of the property in dispute being 5000 square meter land at 6012, GIDC Ankleshwar in village- Sarangpur, Taluka- Ankleshwar, Bharuch and the respondent made the following statements:-

i. It was submitted that as per the order of this Tribunal dated 20.01.2017, it was directed at Para 6(ii) that the respondents herein shall not alienate or deal with the asset of the Company without notice to the petitioner therein i.e. the applicant herein and shall give an opportunity to the petitioner to match the offer of expected consideration. The respondents had issued letter

dated 22.07.2016 stating that the respondents are intending to sell the property and the applicant had in fact sent reply dated 29.07.2016 to the said letter wherein the applicant made no offer but had rather questioned the respondents intent for selling the said property.

ii. It was submitted that since no stay or order of status quo was pending against the said property, the respondents herein had executed a Deed of Assignment No. 8730 dated 24.08.2018 duly registered before the Sub-Registrar at Ankleshwar in favour of M/s Shree Ganesh Remedies Ltd. and has handed over the possession of the said property to the said Assignee. Subsequently GIDC has passed Office Order dated 28.08.2018 confirming the transfer favour of the said M/s Shree Ganesh Remedies Ltd. and hence the said M/s Shree Ganesh Remedies Ltd. is the owner and in occupation of the property in dispute.

iii. Respondent stated that the respondents have not acted in contravention of any orders passed by this Tribunal and hence, the present application being devoid of any merit is liable to be dismissed with heavy costs. It is submitted that the present application is nothing but an arm twisting tactics so as to extort money from the respondents. It is abundantly clear that the applicant does not intend to purchase the said property and hence there arises no sufficient cause for allowing the present application.

8. On perusal of the initial order dated 19.10.2023 as well as additional affidavit dated 15.02.2024 of the Respondent No.2, the Tribunal found that it is a clear case of contempt. Hence, the Respondent No.2, Mr. Jitendra Patel, was asked to remain present in physical mode on the next date of hearing. The relevant extract of the order of this Tribunal dated 22.02.2024 is reproduced as under:-

"As per the affidavit that was filed today is contrary to the statement made on that day by the Counsel for the respondent. Specially in para No. 3 of the affidavit, wherein it is disclosed that the property in question was sold in favour of M/s. Ganesh Remedies Ltd. on 24.08.2018, by way of a deed of assignment and was duly registered, before the sub-registrar, which clearly violates the interim order dated 20.01.2017, passed by this Adjudicating Authority.

Moreover, the statement made on 19.10.2023, also indicates that this Tribunal was misled as stated on that date that only a MoU was entered on 26.08.2016, prior to the passing of the interim order, and no sale deed has been executed till that date. Learned Counsel for the respondent today stated that he made the statement on the instructions to the extent that the instructions on that date were available from Respondent No. 2.

We find that it is a clear case of contempt.

Learned Counsel for the applicant seeks indulgence to file a response to this additional affidavit and also to seek further instructions in this matter.

Respondent No.2, Mr. Jitendra Patel, is also to remain present in physical mode on the next date of hearing. At the requested of the Counsels, the matter stands adjourned to 18.04.2024"

9. The Applicant also filed response by way of an additional affidavit dated 13.04.2024 vide inward Diary No. 3170 on 15.04.2024 in repose to the additional affidavit dated 15.02.2024 filed by the Respondent No. 2. The Applicant inter-alia contended that it is clear from chronology of events that documents for transfer of Assets was executed on 14.06.2018, 15.06.2018 and 24.08.2018 after the date of Honorable NCLT Order dated 20.01.2017. It has further been confirmed by the respondent in its Affidavit that Deed of Assignment was registered before sub-registrar at Ankleshwar on 24.08.2018 and G.I.D.C. passed office order on 28.08.2018 confirming the transfer. Thus it is confirmed that transfer was executed after Honorable NCLT order leading to clear contempt of order.

10. Thereafter, this Tribunal **issued show cause notice** to the Respondent No.2 vide order dated **18.04.2024** as to why he should not be punished for the contempt in exercising the powers under Section 425 of the

Companies Act read with Contempt of Courts Act, 1971. The order of this Tribunal dated 18.04.2024 is reproduced as under:-

> *"Now the applicant has filed counter affidavit on 15.04.2024 vide inward diary no. 3170 in response to the additional affidavit dated 15.02.204 by Respondent No.2. The same is taken on record. In order dated 22.02.2024 we have already recorded that we find that it is a clear case of contempt. Accordingly, Respondent No.2 Mr. Jintendra Patel was directed to present physical mode on the next date of hearing and matters stand adjourned on 18.04.2024 which is today.*
>
> *Today, Respondent No.2 Jitendera Patel is absent and only his counsel is present .Since, this Tribunal has already held that it is a clear case of contempt. Therefore, we issue a show cause to Respondent No.2 as to why he should not be punished for the contempt in exercising the powers under Section 425 of the Companies Act read with Contempt of Courts Act, 1971 with further direction to Respondent No.2 to physically present to the next date of hearing.*
>
> *Re-list all the matters on 02.05.2024."*

11. In pursuance to the issued show cause notice of contempt issued to the Respondent No.2 vide order dated 18.04.2024, the Respondent No.2 in compliance of last order dated 18.04.2024 as well as order dated 02.05.2024, filed affidavit in reply to show cause notice on 04.06.2024 vide Inward Diary No. 4348 with advance copy to the opposite counsel, the same was taken on record. The Applicant was directed to file counter reply to the reply affidavit of the Respondent No.2 within two weeks with advance copy to the opposite counsel.

The order of this Tribunal dated 02.05.2024 is reproduced here under:-

> *"In response to the show cause notice issued by this Tribunal of contempt to the Respondent No. 2. Today Respondent No. 2 contemnor has come physically along with counsel. He sought one more opportunity to respond to the show cause notice of contempt issued by this Tribunal. Be filed within 7 days in the shape of an Affidavit. Respondent No.-2 contemnor to remain present physically on the next*

date of hearing. Re-list all the matters for further consideration on. 06.06.2024."

12. The order of this Tribunal dated 06.06.2024 is reproduced here under:-

"Learned counsel, Mr. Jainish Shah along with R-2 contemnor in person come physically today in court. In compliance of last order dated 02.05.2024 qua the show cause notice of contempt issues to the Respondent No. 2, affidavit in reply to show cause notice has been filed on 04.06.2024 vide Inward Diary No. 4348 with advance copy to the opposite counsel, the same is taken on record. Applicant is directed to file counter reply to the reply affidavit of R-2 within two weeks with advance copy to the opposite counsel. Re-list for further consideration on 25.07.2024."

13. The Respondent No.2 in his reply dated 04.06.2024 to show cause notice of the contempt made the following statements:-

i. Respondent stated that he was under the bona-fide belief that respondents had complied with the directions passed in order dated 20.01.2017 when the Respondents issued letter dated 22.07.2016

stating that the Respondents are intending to sell the property and had called upon the Applicant together with all other shareholders to quote and state their price the Applicant was intending to purchase the said property. Stated that the applicant, instead of making offer with price, sent reply dated 29.07.2016 to the said letter questioning the respondent's intent for selling the said property.

ii. Respondent further states that subsequent to the filing of the contempt petition, this Tribunal had dismissed the present contempt application for non-prosecution vide order dated 19.03.2018 and the same were restored only on 29.03.2019.

iii. Respondent stated that since the matter was dismissed for non-prosecution and was not restored and in absence of any injunction issued by this Tribunal, the respondent No.2, on behalf of the respondent No. 1 company had executed a Deed of Assignment No. 8730 dated 24.08.2018

duly registered before the Sub-Registrar at Ankleshwar in favour of M/s Shree Ganesh Remedies Ltd. and has handed over the possession of the said property to the said Assignee.

iv. Further stated that respondent had executed the said Deed of Assignment only under the bonafide belief that the directions passed in order dated 20.01.2017 were construed to have been complied with when the letter dated 22.07.2016 was issued and the Applicant did not show its willingness to purchase the said property in dispute when the applicant issued reply dated 29.07.2016. Over and above the same, at the time of execution of the Deed of Assignment i.e. 24.08.2018, the contempt proceedings had been dismissed for non-prosecution on 19.03.2018 which were subsequently restored only on 29.03.2019 and hence, respondent was under the bonafide belief

that at the time of execution of Deed of Assignment, no injunction existed.

v. Further stated that respondent had executed the Deed of Assignment only in the beneficial interest of the Company and stated that no monetary or other benefit have been derived from the consideration received therefrom. The Deed of Assignment was executed under the bona-fide belief that the directions have been complied with and further stated that considering the age of the respondent No.2, a lenient view be taken in the matter.

14. The order of this Tribunal dated 25.07.2024 is reproduced here under:-

"Learned PCS, Mr. Kunjal Dalal, appears and states that a counter reply filed by the applicant to the affidavit reply to show cause notice for contempt filed by respondent No. 2 has been filed e-filed on 17.07.2024. Learned Counsel for the respondent states that they have received a copy of the additional affidavit. Learned PCS, Mr. Kunjal Dalal, states that a hard copy was filed. However, the

Registry states that the same is not available on record. Learned PCS for the applicant is directed to follow up with the Registry and place a hard copy of the reply. Learned Counsel for the Contemnor states that liberty may be given to him to file their say in the counter reply by the applicant, within a period of two weeks, from the date of this order. Liberty is granted. Order to be complied, within a period of two weeks, after serving the same on the opposite side. Re-list on 19.09.2024"

15. The Applicant also filed counter reply by way of additional affidavit dated 15.07.2024 to reply to the additional affidavit dated 04.06.2024 of the respondent No.2 on 18.07.2024 vide inward dairy no. D 5662 and made the following statement: -

i. In paragraph No. 2 of Affidavit in reply to show cause for contempt the respondents have sought unconditional apology however it is submitted that respondents having gained huge monetary benefits by contempt do not deserve any apology unless the order is compiled and opportunity to match the offer is given to applicant.

ii. Statements in paragraph No. 3 of Affidavit in reply to show cause for contempt are misleading. It has been wrongly stated that respondent was under bona fide belief that compliance has been made in view of letter dated 22.07.2016 stating that respondents are intending to sell the property and called upon applicant together with all share holders to quote and state their price. Applicants herein replied the said letter on 29.07.2016 (refer Ann. 'B' page 10 to 14 of affidavit in reply on behalf of the respondents) where in it was clearly brought to notice of respondents that any attempt to sell of dispose off the assets shall amount to contempt. Relevant paragraph 8 of our reply is reproduced for ready reference:

"In the facts and circumstances, you are hereby put to notice that any attempt on your part to sell or dispose off the assets of the company is not only against the interest of the company but it would also be direct contempt of the order

made by the Honorable Company law Board. You are also aware that an O.J. Appeal No.12 of 2015 is pending before Hon'ble High Court. Your action would tantamount to overreaching the process of Hon'ble High Court. You are therefore requested to desist from such action, failing which appropriate action will be taken against you for contempt and for other actions before appropriate forum."

iii. It is also pertinent to note that the respondent did not obey the original order passed by Honorable Company Law Board (CLB) in C.P. 59 of 2012 and present contempt of Order of Honorable NCLT in application for implementation of said CLB Order.

iv. In paragraph No. 4 of Affidavit in reply to show cause for contempt the respondents have stated that the present contempt application was dismissed for no prosecution vide order dated 19.03.2018 and was restored on 29.03.2019. We do not make any comment however attention is

drawn to observations made in paragraph 12 of order dated 29.03.2019 for restoration of application. The same is reproduced below for ready reference:

"It is well settled legal position in catena of decisions of the Hon'ble Supreme court and High courts that if there is allegation of breach of court's order/direction and there is prima-facie evidence for alleged evidence, then the matter becomes a matter between the court and alleged contemnor and the status of the Applicant can only be complainant/informer. It is further matter of record that this bench already formed a prima-facie view that the direction issued by this court and order of CLB were not implemented by the respondents, which may amount to be contempt of Court. Hence, such issue needs to be dealt with on its merits and not to be decided on account of

procedural lapses and not to be rejected on technical reasons.

Hence in our view, in order to meet the ends of justice, it is expedient to consider the above stated Miscellaneous Application and contempt Application on its merits and to be disposed in accordance with law after affording opportunity of being heard to both the parties. Therefore, the inconvenience caused, if any, to the respondents can be compensated by appropriate cost."

In view of above observations it is clear that dismissal of application for non-prosecution and restoration of same do not in any way come for obligation of respondents to comply with the order.

v. In paragraph No. 5 of Affidavit in reply to show cause for contempt the respondents have stated that deed of assignment was executed on 24.08.2018 since matter was dismissed for non-

persecution and was not restored and there was no injunction issued by Honorable Tribunal. The respondents have again tried to mislead the Honorable Tribunal since they are not relived from complying with the order on dismissal of application for contempt for non-prosecution. The observations in paragraph 18 of restoration order (reproduced in paragraph 6 of this reply) also makes it clear that in case of contempt of order the status of applicant is only of complainant/informer.

vi. The statements made in paragraph 6 of Affidavit in reply to show cause for contempt the respondents have already been dealt with in earlier paragraphs and same is not repeated for sake of repetition and brevity.

vii. The statements made in paragraph 7 of Affidavit in reply to show cause for contempt are denied. If the deed of Assignment was executed in interest of company the opportunity to match the offer

was not given to applicant. The fact that respondents preferred to violate the order in spite of warning vide letter dated 29.07.2016 is sufficient to suspect undue benefits derived by the respondents in executing deed of Assignment.

16. The Respondent No.2 has also filed further affidavit dated 04.09.2024 through e-mode on 09.09.2024 and made the following statement: -

i. I am the Respondent No.2 in the present Application and alleged contemnor in the present proceedings. I have filed my affidavit in reply to the show cause for contempt issued by this Hon'ble Tribunal and I reiterate the averments made therein and I reiterate my unconditional apology to any breach or violation of any order of this Hon'ble Tribunal committed by the Respondent No.2 and I further reiterate that the Respondent No.2 Deponent holds this Hon'ble Tribunal in highest regards and would abide by any order of this Hon'ble Tribunal.

ii. I am filing this further Affidavit for the limited purpose of dealing with the Affidavit filed by the Applicant against the reply affidavit filed by the Respondent No.2 Deponent herein to the show cause notice of contempt issued by this Hon'ble Tribunal. I am not dealing with the affidavit para-wise but the same may not be construed as admission of any averments, statements or contentions raised by the Applicant in its affidavit, unless admitted herein and all such averments, statements or contentions are denied in toto.

iii. I state that the present Application for contempt is misconceived and premature and no amendment has been preferred subsequently or any fresh petition is filed and hence, the present application is liable to be dismissed on this ground alone. It is most pertinent to note that the present contempt petition is filed in and around July, 2017 on the apprehension of the Applicant

that the Respondents herein may dispose of, transfer or alienate the property of the Respondent no.1 Company being 5000 sq. meter land at 6012, GIDC Ankleshwar in Village - Sarangpur, Taluka - Ankleshwar, District - Bharuch(hereinafter referred to as the "said property") without notice to the petitioner therein i.e. the applicant herein and shall give an opportunity to the petitioner to match the offer of expected consideration in breach of the order passed by this Hon'ble Tribunal dated 20.01.2017 in TP No.115 of 2016. At this juncture, it may be pointed out that no sale or transferred had been executed and the present petition was filed only on the basis of apprehension on without any basis.

iv. Subsequently, this Hon'ble Tribunal had dismissed the present contempt application for non-prosecution vide order dated 19.03.2018 and the same were restored only on 29.03.2019. Since

the matter was dismissed for non- prosecution and was not restored and in absence of any injunction issued by this Hon'ble Tribunal, I, the respondent No.2, on behalf of the respondent No.1 company had executed a Deed of Assignment No. 8730 dated 24.08.2018 duly registered before the Sub-Registrar at Ankleshwar in favour of M/s Shree Ganesh Remedies Ltd. and has handed over possession of the said property to the said Assignee.

v. I vehemently state that the Deed of Assignment entered into on 24.08.2018 has not been challenged till date and no contempt proceedings have been initiated on the basis of this Deed of Assignment till date. I further state that the Applicant has neither filed any amendment application in the present proceedings nor has filed any fresh petition so as to allege contempt on the basis of the Deed of Assignment dated 24.08.2018 and hence, no contempt

proceedings can be initiated in the present petition as the present petition is filed in absence of any cause of action. I most humbly state that cause of action, if any, could be said to have arisen only after 24.08.2018 whereas the present petition having been filed in the year 2017 without any amendments till date cannot be considered to be a petition with any cause of action. Hence, the present petition is liable to be dismissed with costs.

vi. I reiterate that I had executed the said Deed of Assignment only under the bona-fide belief that the directions passed in order dated 20.01.2017 were construed to have been complied with when the letter dated 22.07.2016 was issued and the Applicant did not show its willingness to purchase the said property in dispute when the applicant issued reply dated 29.07.2016. Over and above the same, at the time of execution of the Deed of Assignment i.e. 24.08.2018, the

contempt proceedings had been dismissed for non-prosecution on 19.03.2018 which were subsequently restored only on 29.03.2019. Hence, I was under the bona-fide belief that at the time of execution of Deed of Assignment, no injunction existed.

vii. In view of what is stated hereinabove, I state that I had executed the Deed of Assignment only under the bona-fide belief that the directions have been complied with and further state that considering the age of the Respondent No. 2, lenient view be taken in the matter. Further I state the present petition being filed without any cause of action is liable to be dismissed with cost.

17. The Applicant also filed Response Affidavit dated 11.12.2024 to further Affidavit dated 04.09.2024 of the Respondent No.2 vide inward Dairy No. D 8974 on 13.12.2024 and made the following statement:-

i. In paragraph 1 respondent has reiterated his unconditional apology and stated that stated that he holds the tribunal in highest regard and would abide by any order of this Honorable Tribunal. It is submitted that the respondent do not deserve any apology and his conduct confirms that he has no regard for the tribunal and has been habitually violating the orders of this tribunal..

ii. In paragraph No. 3 it has been stated that the application is misconceived and premature. The statement is misleading and only desperate attempt to come out of contempt which is confirmed by Honorable Tribunal in previous orders. The present application has been filed on information received for report of Board of Directors for year ending 31.03.2017 where in it has been confirmed by respondent that they have received consideration of Rs.1,50,00,000/- in furtherance of agreement to transfer the Company's immovable assets. (refer page 5 and 6

of Petition) The acceptance of consideration amounts without compliance of order amounts to contempt. It is pertinent to note that even after filing of the contempt petition the respondent executed various documents including deed of assignment dated 24.08.2018.

iii. In paragraph 4 it has been stated that the contempt petition was dismissed on 19.03.2018 for non-persecution and was restored on 29.03.2019. It is respectfully submitted that dismissal of contempt petition for non-persecution do not absolve the respondent for compliance of order violated. Kind attention of this tribunal is brought to paragraph 12 of restoration order dated 29.03.2019.

iv. In paragraph 5 the respondent has stated that contempt proceedings cannot be initiated against present petition and some amendments petition ought to have been filed. It transpires that the

respondent has admitted the contempt but is only against proceedings in present petition unless same is amended. The matter has already been clarified the above paragraph that cause of action occurred at time of filing of petition and in any case in view of observations in paragraph 1"2 of restoration odder (reproduced earlier) the matter is between the Tribunal and contemnor and the tribunal is within powers to initiate contempt proceedings once the breach is brought to notice or otherwise.

v. With regard to statements in paragraph 6 it is submitted that the respondent has not clarified how letter dated 22.07.2016 can be considered as compliance of directions made vide subsequent order dated 20.01..2017. The respondent has been misleading the tribunal in desperate attempt to escape contempt proceedings.

vi. In view of above and the fact that contempt has been established the proceedings be initiated against Respondent No. 2 and all other respondents.

18. The order of this Tribunal dated 19.12.2024 is reproduced here under:-

"Now, the applicant has filed response to the further affidavit filed by R-2 on 13.12.2024 vide inward diary No. 8974, the same is taken on record.

We have heard the learned PCS for the Applicant and learned Counsel for R-2.

It is observed that the CP/59/2012 was filed before the Company Law Board which was finally decided on 17.11.2014. Thereafter, CA/19/2015 filed by the Applicant and during the pendency the said application was transferred before this Tribunal and renumbered as TP/115/2016. The said TP/115/2016 being CA/19/2015 was finally decided vide order dated 28.01.2017 with specific directions as reproduced herein below:-

That it is hereby ordered that the Respondents shall not alienate or deal with the assets of the Respondent No. 1 Company without proper notice to the Petitioner. The Respondents shall strictly abide

the aforesaid direction while selling the assets by giving an opportunity to the Petitioner to match the offer of expected consideration.

Reserved for the order."

MA No. 5 of 2017 in TP No. 115/634A/NCLT/ AHM/ 2016 In CA No. 90/634A/CLB/MB/2015

19. The above MA was filed by the Applicant on 07.11.2017 seeking the following Interim reliefs:-

a. *The respondents be directed to furnish complete details of agreement to transfer respondent Number 1 company immovable properties and to furnish copy of sale agreement and copy ledger account(s) in respect of consideration received for transfer of immovable properties. The details and copies of documents be furnished to this Hon'ble Tribunal and also petitioner.*

b. *Respondents be directed to maintain status quo in respect of immovable properties and not to execute any documents or accept/refund any monies received.*

c. *Respondents be directed to deposit all monies received towards consideration for transfer of immovable properties with this Hon'ble Tribunal.*

d. *Any other order as Tribunal may deem fit.*

20. The above MA was filed to issue directions to the Respondents to furnish the details of the Sale of the

property in dispute being 5000 square meter land at 6012, GIDC Ankleshwar in village- Sarangpur, Taluka-Ankleshwar, Bharuch and to maintain status quo on the property.

21. The Respondent No. 2 has filed its reply on 24.01.2018 Vide inward dairy no. D706 and stated the following :-

i. The respondents stated that this Tribunal vide its order dated 20.01.2017 has stated in direction at Para 6(ii) that the respondents herein shall not alienate or deal with the asset of the Company without notice to the petitioner therein and shall give an opportunity to the petitioner to match the offer of expected consideration.

ii. The respondents submit that the respondent No. 1 is the owner of the property being 5000 sq. meter land at 6012, GIDC Ankleshwar and admeasuring 3200 sq. feet situated thereon (hereinafter referred to as the "said property"). It is submitted that as there was huge liabilities against the creditors of the respondent No.1

company, the respondents during their meeting of Board of Directors of the respondent No.1 Company had decided to sell the said property in order to reduce its liabilities. In view thereof, the respondents had vide letter dated 22.07.2016 called for offers from all its shareholders including the applicant herein to purchase the said property. It was specifically stated in the said letter that all shareholders can submit their bid in sealed cover on or before 29/07/2016 and it was also stated that in case the offer is not received before the said date then the respondent No.1 company shall dispose of the said property accordingly.

iii. The respondents state and submit that the petitioner herein did not make any offer for purchasing the said property but had rather given a frivolous reply dated 29.07.2016 stating that the respondent No.1 need not sell the said property and had rather called upon the respondents

herein to provide reasons for such sale of the property. The petitioner herein has stated in its notice that the sale of the said property would be violative of the order dated 17.11.2014 of the Ld. Company Law Board (CLB) and had asked the respondents herein not to initiate any actions for sale of the property.

iv. The respondents state and submit that sufficient opportunity was given to the petitioner to purchase the property and as per the directions of this Tribunal, the petitioner was to be given an opportunity to purchase the property for expected price. The respondents have duly complied with the said condition by providing reasonable opportunity to the applicant to purchase the said property but the applicant for its ulterior motives did not make any offer and threatened the respondents herein not to sell the said property. It is submitted that it was only because the petitioner herein showed no inclination for

purchasing the said property, the respondents thereafter entered into agreement to transfer the said property to third party. It is submitted that the respondents herein entered into a Memorandum of Understanding (MOU) with one Shree Ganesh Remedies Pvt. Ltd. on 22.08.2016 for the sale of the said property. It is submitted that the applicant was always aware about the said agreement but had taken no action till date for making offer for purchase of the said property which clearly shows the malafide intentions of the applicant.

v. The respondents state and submit that the present application is nothing but an afterthought merely to harass the respondents herein and to ruin the reputation and financial condition of the respondent No. 1 company and therefore, the present application is liable to be dismissed from the outset.

vi. It may be pointed out that during the hearing of the main matter itself, the applicant was aware of the said order but for reasons best known to the applicant, the applicant did not bring the same to the notice of this Tribunal during the hearing of the said matter. It is further submitted that the agreement for transfer of the said property was made prior to the order dated 20.01.2017 and therefore the respondents have not done any actions in contravention of the order dated 20.01.2017 passed by this Tribunal. It is submitted that the present application is nothing but an afterthought and therefore there arises no opportunity for allowing the present application for execution of order dated 20.01.2017 which have already been complied with by the respondents herein.

22. The Applicant has filed the rejoinder to the reply of the Respondent on 19.01.2021 vide inward dairy no. 682 and made the following statements:

i. It has however been noticed that the respondents have executed a deed of assignment on 24/08/2018 in favor of Shree Ganesh Remedies Limited in respect of Assets of Respondent No. 1 Company.

ii. In Paragraph 7 of the deed of Assignment it has been stated that the Respondent No. 1 Company has transferred and assigned Plot No. 6012 in Ankleshwar Industrial Estate, being the asset of Respondent No. 1 Company to M/s Ganesh Remedies Limited for consideration of Rs. 1,60,00,000/- (Rupees One Crore Sixty Lacs Only). The Deed of Assignment resulting in alienation of property of Respondent No. 1 Company was made without proper notice to the petition and no opportunity was given to the petitioner to match the offer of consideration as directed in order dated 20.01.2017.

iii. The Petitioners herein exercise their rights to match the consideration is disclosed in deed of

assignment and offer an amount of Rs. 1,68,00,000/- (Rupees One Crore Sixty Eight Lacs Only) being 5% more of the amount at which the property has been transferred as per deed of Assignment. We undertake to abide by all other conditions of Deed of Assignment and further undertake to make the payment within 30 days of order. It is proposed to deposit the amount of Rs. 1,68,00,000/-(Rupees One Crore Sixty Eight Lacs Only) in an escrow account to be transferred to the Respondent no. 1 Company on receipt of possession and execution of documents of the property in favor of the petition whichever is later.

iv. The Respondents in their reply have not clarified how the direction in paragraph 6(iii) and 6 (iv) have been complied with and thereby admitted non-compliance.

v. Respondent in the Reply have tried to mislead and misguide the Tribunal by producing the documents prior to the date of order. The

pleadings made in the reply in no way confirm how the order has been executed.

23. We have heard the counsel for the appearing parties and perused the records produced before us of Contempt Application No. 6 of 2017 as well as of Miscellaneous Application No. 5 of 2017.

24. We have to fist decide whether there is any contempt of the directions passed by this Authority. Initiating contempt has a dual purpose, (a) upholding majesty of law by punishing the contemnor, and (b) coercing the contemnor to do what the law requires him to do

25. For punishing the guilty on account of disobedience, there is no specific provision in IBC like section 425 under the Companies Act, 2013 which says:

> "**425. *Power to punish for contempt*** - *The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effect subject to modifications that-*

(a) *the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and*

(b) *the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf."*

26. Under Section 425, the Tribunal and the Appellate Tribunal are only empowered with powers under Contempt of Courts Act, 1971 in respect of contempt of itself as the High Court. Section 469 of the Companies Act, 2013 vests in the Central Government the authority to "makes rules" for carrying out the provisions of this law, by notification, clarifying by sub- section (2) that such enabling power confers the jurisdiction to make rules "for all or any of the matters which by this Act are required to be, or may be prescribed or in respect of which provision is to be or may be made by rules." The Central Government framed rules, known as the National Company Law Tribunal Rules, 2016, by virtue of power conferred

under section 469 by issuing notification G.S.R. 716(E) in the official Gazette on 21.07.2016.

27. In case of contempt of any order passed under the IBC, 2016 or under the Companies Act, 2013 this Tribunal has power to punish contemnor by following the procedure prescribed under the Contempt of Courts Act. Here, reference can be made to the decisions in ***Shailendra Singh Versus Nisha Malpani (2021) ibclaw.in 528 NCLAT; Mahesh Kumar Panwar Versus M/s Mega Soft Infrastructure Pvt. Ltd. and Ors. (2019) ibclaw.in 331 NCLAT; C.Vinod Hayagriv and Ors. versus C. Ganesh Narayan and Ors., Contempt Case (AT) No. 13 of 2023 in Company Appeal (AT) No. 65 of 2019, decided on 09.08.2023 and Registrar NCLT and Ors. Versus Manoj Kumar Singh, IRP Palm Developers Pvt. Ltd., Contempt Petition No. CA/11/2021 in Company Petition No. 894/ND/2019,*** decided on **17.01.2022.**

28. **Section 12 in The Contempt Of Courts Act, 1971.**

12. Punishment for contempt of court.—

(1) *Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:*
Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation.—
An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) *Notwithstanding anything contained in any other law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.*

(3) *Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.*

(4) *Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:*
Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation.—

For the purposes of sub-sections (4) and (5),—

(a)"company" means any body corporate and includes a firm or other association of individuals; and

(b)"director", in relation to a firm, means a partner in the firm.

29. Section 2(a) & 2(b) of the Contempt of Courts Act, 1971 defines the contempt as under:

2. Definitions: - In this Act, unless the context otherwise requires,-

(a) "contempt of court" means civil contempt or criminal contempt;

(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

30. Non-compliance of the order of this Authority is civil contempt, for which two elements are required to be established, i.e.,

(i) *Disobedience of any judgment, decree, directions, orders or other process of Court.*

(ii) *Disobedience or breach must be wilful, deliberate and intentional*

31. The key ingredient of civil contempt as defined under Section 2(b) of the Contempt of Courts Act, 1971 is deliberate flouting of orders of this Authority. The element of willingness is an indispensable requirement to bring home the charge within the Act, in view of the decision in ***Anil Ratan Sarkar & Ors. versus Hirak Ghosh & Ors., AIR 2002 SC 1405***. It has been held by the Hon'ble Supreme Court in ***Indian Airports Employees' Union versus Ranjan Chatterjee (1999)2 SCC 537.***

> *7. It is well settled that disobedience of orders of Court, in order to amount to 'Civil Contempt' under Section 2(b) of the Contempt of Courts' Act, 1971 must be 'wilful' and proof of mere disobedience is not sufficient. S.S. Roy v. State of Orissa and Ors. AIR 1960 SC 190. Where there is no deliberate*

flouting of the orders of the Court but a mere misinterpretation of the executive instructions, it would not be a case of Civil Contempt Ashok Kumar Singh and Ors. Vs. State of Bihar and Ors. 1992 CriLJ 284.

32. In ***Kapildeo Prasad Sah & Ors. versus State of Bihar & Ors. (1999)7 SCC 569*** also it is clearly stipulated that disobedience should be wilful and should be clear violation of court's order with the knowledge of contemnor. It also records that initiation of contempt proceeding is not a substitute for execution proceedings though at times purpose may also be achieved. The Hon'ble Supreme Court of India in ***U.N. Bora versus Assam Roller Flour Mills Ass. reported in (2022)1 SCC 101*** has elaborately dealt with the issue as what amounts to civil contempt and how it is to be proved. The relevant paragraphs of the judgment read as under:

"8. We are dealing with a civil contempt. The Contempt of Courts Act, 1971 explains a civil contempt to mean a wilful disobedience of a decision of the Court. Therefore, what is relevant is the "wilful" disobedience. Knowledge acquires

substantial importance qua a contempt order. Merely because a subordinate official acted in disregard of an order passed by the Court, a liability cannot be fastened on a higher official in the absence of knowledge. When two views are possible, the element of wilfulness vanishes as it involves a mental element. It is a deliberate, conscious and intentional act. What is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature. Similarly, 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. It is well open to the said party to contend that the benefit of the order passed has not been actually given, through separate proceedings while seeking appropriate relief but certainly not by way of a contempt proceeding. While dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very judgment which was allegedly violated. The said principle has to be applied with more vigour when disputed questions of facts are involved and they were raised earlier but consciously not dealt with by creating a specific forum to decide the original proceedings.

9. We do not wish to reiterate the aforesaid settled principle of law except by quoting the reasoned decision of this Court in Hukum Chand Deswal v. Satish Raj Deswal [Hukum Chand Deswal v. Satish Raj Deswal, (2021) 13 SCC 166] wherein the celebrated judgment in Ram Kishan v. Tarun Bajaj [Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204 : (2015) 3 SCC (L&S) 311], has been quoted. The following paragraphs would govern the aforesaid principle: (Hukum Chand Deswal case

[Hukum Chand Deswal v. Satish Raj Deswal, (2021) 13 SCC 166], SCC paras 20-21 & 25-27).

"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. 209-11)

'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 reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities.....

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."

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.

33. Thus, it is to be proved that despite having knowledge of such an order, the person concerned had deliberately and wilfully breached, with an intention of lowering the dignity and image of the 'Court', as per

decision of the Hon'ble Supreme Court in ***Salauddin Ahmed versus Samta Andolan AIR 2012 SC 3891***.

34. Given the factual background and the principles applicable for prosecuting a person under the Contempt of Courts Act, the Applicant is required to prove that the Respondents have wilfully disobeyed the order of this Authority. Thus, we need to know the role played by the Respondents in dealing with the issue.

a. It is observed that the order of this Tribunal dated 20.01.2017 contained several directives for the respondents. Firstly, it directed the respondents to pay a cost of Rs.10,000/- to the applicants as a penalty for their prior non-compliance. Secondly, and most significantly, it prohibited the respondents from alienating or dealing with the company's assets without providing proper notice to the applicants and affording them the opportunity to match any prospective offers. This was aimed at protecting the applicants' interests and ensuring fairness in any asset disposal. Thirdly, the order mandated that the respondents furnish a copy of the company's register of

members to the applicants within 15 days of receiving the order.

b. The agreement/MoU dated 26.08.2016 was entered into at the back of the Applicant and the Applicant came to know only form the Directors report dated 01.09.2017 received along with Notice of Annual General Meeting for year 31.03.2017.

c. Despite these clear directions, The Respondent No.1 through its Director i.e. the Respondent No. 2 executed a Deed of Assignment dated 24.08.2018, transferring the immovable property of Respondent No.1 Company to M/s Shree Ganesh Remedies Ltd., without notice or opportunity to the Applicant. Furthermore, the respondents failed to comply with the order to provide a copy of the register of members to the applicants, further demonstrating their disregard for the Tribunal orders.

d. The Deed of Assignment was executed on 24.08.2018, well after the order dated 20.01.2017, without prior notice to the Applicant or providing an opportunity to match the offer, in clear violation of the Tribunal's directions.

e. Affidavits and rejoinders filed by the Applicant highlight the Respondents' disregard for Tribunal orders and their deliberate attempts to alienate assets contrary to judicial directives.

f. Respondent No. 2's defense of "bona fide belief" is unsubstantiated, as the directions were unequivocal and did not permit unilateral decisions without involving the Applicant.

g. The Respondent No. 2 claimed compliance through prior correspondence and highlighted the dismissal of the contempt application for non-prosecution in 2018, which was restored only in 2019, during which time the Deed of Assignment was executed. Therefore, the Tribunal finds that the dismissal of the Contempt Application for non-prosecution does not negate the binding nature of its orders.

h. Further, order dated 20.01.2017 passed by this tribunal was not taken into appeal before any higher authority and has thus attained finality. Therefore, the Respondents were under a continuous obligation to comply with the directions issued on 20.01.2017.

i. This is not the first instance of disobedience by the Respondents. The Tribunal notes that in a previous contempt application, a penalty was imposed on the Respondents as an alternative to a contempt order. Despite such leniency in the past, the Respondent No.2 has repeated the non-compliant behavior, demonstrating a pattern of disregard for judicial directives. The repeated conduct of the Respondent No. 2 demonstrates a disregard for the sanctity of judicial proceedings and warrants stricter action to uphold the authority of this Tribunal.

j. Though the Respondent No. 2 tendered an unconditional apology for any alleged contempt but simultaneously defended the application, asserting that the actions were taken in a bona fide manner. It is overshadowed by the concurrent defense of actions that directly contravene the Tribunal's order, reflecting a lack of genuine remorse.

k. The unconditional apology tendered by Respondent No.2 is noted but deemed insufficient in light of the concurrent justification of contemptuous actions. Genuine remorse requires acknowledgment of wrongdoing and proactive compliance, both of which are absent in this case. The past leniency

shown by the Tribunal was aimed at ensuring compliance without punitive measures. However, the Respondents' repeated violations warrant a stronger response to deter further contemptuous actions.

l. It is also noted that the Respondent No. 2 has been a party to the proceeding since the inception. Hence, he has not only knowledge of entire proceedings but also has signed the documents of the proceedings as well as the Respondent No. 2 has also signed the Deed of Assignment dated 24.08.2018 on behalf of Respondent No. 1.

m. Considering the entire facts and circumstances of the case and having regard to the legal position concerning the point in issue, we think that the Respondent No. 2 has intended to undermine the administration of justice and his intentional acts cannot be disregarded. Administration of justice would be defeated if the order of any Authority is disregarded with impunity. There can be no laxity in such a situation because otherwise the orders of this Authority would become the subject of mockery. We want to quote the observations of Hon'ble Supreme Court in ***Commissioner, Karnataka Housing Board versus C. Muddaiah***

AIR 2007 SC 3100 that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law.

n. Therefore, the actions of the Respondent No.2 constitute willful disobedience of the Tribunal's orders, undermining judicial authority and causing irreparable harm to the Applicant.

o. In view of our above mentioned discussions as well as Show Cause Notice issued by this Tribunal by its order dated 18.04.2024, we hold the Respondent Nos. 2- Mr. Jitendra Mukundrai Patel, is held guilty of contempt of order dated 20.01.2017 for disobeying the directions of this Tribunal under Section 425 of the Companies Act, 2013 read with section 12 of the Contempt of Courts Act, 1971.

35. Now, to decide the quantum of sentence/ punishment in accordance with Section 12 of the Contempt of

Courts Act, 1971 read with Section 425 of Companies Act, 2013 re-list the matter for hearing on the quantum of sentence/ punishment on **24.01.2025.**

36. The Respondent No.2 is further directed to remain physically present before this Tribunal on the next date of hearing. The Registry shall ensure that a copy of this order is served upon the Respondent No. 2 forthwith.

37. As far as the cause of the **MA No.5 of 2017** is concerned, during the pendency of the present M.A. the immovable property in question was sold by the Respondent No.1 through the Respondent No.2 to a third party and Deed of Assignment was executed on 24.08.2018 in wilful disobedience of the Tribunal's orders. Prayer (a) is met as the record of the sale is placed before this Tribunal and only Prayer (b) and (c) are left for consideration.

38. However, no amendment was sought by the Applicant in the M.A. and its relief clauses in view of the above subsequent events for consequential reliefs which came

in-to the knowledge of the Applicant after filing of the present M.A.

39. Therefore, cause qua Prayer (b) and (c) of the MA No.5 of 2017 as on date no more survives in view of the above subsequent events. Hence, **MA No.5 of 2017** is **deposed of** being rendered infructuous with liberty to the Applicant to take recourse in accordance with law to enforce his legal rights.

40. List the **Contempt Application No.6 of 2017** on **24.01.2025.**

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)
SP

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)