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

***Reserved on : 17.05.2019***
% ***Pronounced on : 09.08.2019***

\+ **CONT.CAS (C) No.579/2017**

VED PRAKASH ABBOT ..... Petitioner

Through: Mr. Dayan Krishnan, Senior Advocate with Mr. Ankit Agarwal, Advocate.

versus

KISHORE K. AVARSEKAR & ORS ..... Respondents

Through: Mr. Jawahar Raja, Advocate.

**CORAM:**
**HON'BLE MS. JUSTICE JYOTI SINGH**

**JUDGMENT**

**JYOTI SINGH, J.**

**C.M. Appl. No.3887/2019 (for delay)**

1. This is an application seeking condonation of delay of 9 days in filing rejoinder.

2. For the reasons stated in the application, the same is allowed and the delay of 9 days in filing the rejoinder is condoned.

C.M. stands disposed of.

**C.M. Appl. No. 19227/2019 (for delay)**

3. This is an application seeking condonation of delay of 34 days in filing reply.

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4. For the reasons stated in the application, the same is allowed and the delay of 34 days in filing the reply is condoned.

C.M. stands disposed of.

**CONT.CAS (C) No.579/2017**

5. The present contempt petition has been filed by the petitioner under Sections 10 and 12 of the Contempt of Courts Act, 1961 read with Article 215 of the Constitution of India, seeking a direction to punish respondent No. 7 and its key officers/directors (respondent Nos. 1 to 6) for willful disobedience of the undertaking dated 21.04.2017 given on behalf of respondent No. 7, in respect of a settlement under Order 23 Rule 3 CPC as also for violation of order dated 10.07.2017, whereby, in view of the settlement, a compromise decree has been passed.

6. When the matter came up on 21.8.2017 the learned senior counsel for the petitioner sought liberty to implead respondent No. 6, which is the Authorised Representative of the respondent no.7-Company and filed a corrected memo of parties. Liberty was granted by this Court and in terms thereof amended memo of parties was filed wherein the Authorised Representative of the Company was impleaded as respondent No. 6.

7. The brief and relevant facts as averred by the petitioner are that on 19.10.2016, Jai Enterprises, a sole proprietorship of the petitioner filed a suit being CS No.59041/2016 before the Trial Court for recovery of a sum of Rs.15,81,420/- against respondent No. 7. On

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21.04.2017, a joint application for settlement under Order 23 Rule 3 CPC was filed by the parties with the following terms:

> *(a) Defendant No. 1 will make payment of the principal sum of Rs.10,19,763/- (Rupees ten lakh nineteen thousand seven hundred and sixty three only) in full and final settlement of the plaintiffs claims in the present suit;*
>
> *(b) This payment will be made in five monthly installments with the first installment being paid on 02.05.2017 and every subsequent installment being paid on the second of every month;*
>
> *(c) No installment shall be less than Rs.1,50,000/8- (Rupees one lakh fifty thousand and paise nil only);*
>
> *(d) On payment of the above five monthly installment of the total principal sum of Rs.10,19,763/- (Rupees ten lakh nineteen thousand seven hundred and sixty three only) the plaintiff shall forego all other claims made in the suit;*
>
> *(e) On default in payment of any installment the Defendant No. 1 undertakes to pay the plaintiff interest at the rate of 12% per annum on the defaulted sum till the date of payment;*
>
> *(f) On payment of all five installments plaintiff undertakes to withdraw all proceedings instituted by them against the Defendant No. 1 and its directors including criminal complaints filed, and to communicate such withdrawal to the Defendant No. 1.*
>
> *(g) Defendant has no objection to the plaintiff applying and receiving refund of court fees paid in the present suit."*

8. Pursuant to the said settlement, on 04.05.2017, the cheque given by respondent No. 7 for Rs.1,50,000/- towards the first installment,

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was dishonored on the ground 'account blocked'. On being informed of the dishonor, respondent No. 6 deposited Rs.1,50,000/- by RTGS on 05.05.2017 and the cheque was to be used towards the second installment.

9. On 14.06.2017, the cheque for Rs.1,50,000/- for the second installment also bounced and a legal notice under Section 138 of Negotiable Instruments Act, 1882 ('NI Act'), was sent to the respondents on 08.07.2017, by the petitioner.

10. On 20.06.2017, IRP (Interim Resolution Professional) was appointed by the National Company Law Tribunal (NCLT) in an application filed by respondent No. 7 under Section 10 of the Insolvency and Bankruptcy Code, 2016 (IBC). On 10.07.2017, the Trial Court recorded the settlement between the parties and the suit was disposed of by passing a compromise decree.

11. On 19.02.2018, during the course of proceedings, under Section 138 of the NI Act, a demand draft of Rs.1,50,000/- was given by the authorized representative of respondent No. 7 to the petitioner.

12. On 20.03.2018, an application was filed by the IRP, *inter alia*, stating that respondent No. 7 Company could not be revived and an Official Liquidator be appointed.

13. On 16.04.2019, summons were issued against respondent No. 7 Company and respondent Nos. 1 to 5 in a complaint under Section 200 of the Cr. P.C. for offences under Section 420/406/120B/34 IPC.

14. Learned senior counsel for the petitioner submits that there is a willful disobedience by the respondents of the undertaking and the

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settlement agreement dated 21.04.2017 as well as the compromise decree passed by the Civil Court on 10.07.2017. He submits that the respondents did not have any intention to abide by the terms of settlement and willfully misled the Court to accept the same and decree the suit on its basis. He submits that this is evident from the fact that even prior to the appointment of the IRP by the NCLT on 20.06.2017, the respondents had already defaulted twice and the cheques had bounced.

15. The next contention of the petitioner is that the payment of Rs.1,50,000/- made by respondent No. 6 on 19.02.2018 indicates that the Respondents had the capacity to pay but were only willfully disobeying the decree. It is also submitted that the plea of the respondents that respondent No. 7 could not have made any payment after appointment of the IRP on 20.06.2017 is misplaced, inasmuch, as payment of Rs.1,50,000/- was made by way of a demand draft by the authorized representative of respondent No. 7 on 19.02.2018, i.e., after seven months of the appointment of the IRP.

16. The next contention of learned senior counsel for the petitioner is that a moratorium imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016, does not have any impact on the contempt proceedings before this Court under Article 215 of the Constitution of India and Contempt of Courts Act. The submission is that Section 14 has been interpreted by this Court in *E.D. versus Axis Bank* in Criminal Appeal 143/2018, decided on 02.04.2019 and it has been held that provisions of Section 14 IBC cannot come in the way of a statutory authority conferred powers under Prevention of Money

Laundry Act (PMLA). He submits that though this judgment is under PMLA, but the ratio would apply to a case where a moratorium has been issued under Section 14 of IBC. He submits that Section 14 of IBC, no doubt, categorically bars the filing of executing petitions but the contempt petition would still be maintainable.

17. Learned senior counsel for the petitioner further submits that the claim for money filed by the petitioner sole proprietorship, as operational creditor under Section 15 of the IBC is irrelevant inasmuch as the present proceeding has been filed seeking to punish the respondents under Contempt of Courts Act and not for recovery of the money due. In contempt proceedings, the Courts are required to lift the Corporate veil and punish the Directors / Officers In-charge, responsible for contempt by the Company. Learned senior counsel has placed reliance upon the following judgments:

a) ***Delhi Development Authority v. Skipper Construction Co. (P) Ltd. & Anr.,*** **(1996) 4 SCC** 622 at paragraph 28;

b) ***Aligarh Municipal Board & Ors. v. Ekka Tonga Mazdoor Union & Ors.*** **(1970) 3 SCC 98** at paragraph 6;

c) ***Jyoti Ltd.*** **v.** ***Kanwaljit Kaur Bhasin,*** **32 (1987) DLT 198** at paragraph 21.

18. I quote hereunder the paragraphs cited and relied upon by the learned senior counsel for the appellant:

> *"1.* ***Delhi Development Authority v. Skipper Construction Co. (P) Ltd. & Anr., (1996) 4 SCC 622***.
>
> *28. The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities*

*or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejwant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/or members of his family and that the device of incorporation was really a ploy adopted for committing illegalities and/or to defraud people.*

*2.* ***Aligarh Municipal Board & Ors. v. Ekka Tonga Mazdoor Union & Ors. (1970) 3 SCC 98***.

*6. In regard to the appeal by the Municipal Board, it was contended that the Board being a Corporation it acts through natural persons and therefore, it cannot be convicted of contempt of court. This submission is unacceptable. The law as it exists today admits of no doubt that a Corporation is liable to be punished by imposition of fine and by sequestration for contempt for disobeying orders of competent courts directed against them. A command to a Corporation is in fact a command to those who are officially responsible for the conduct of its affairs. If they, after being apprised of the order directed to the Corporation, prevent compliance or fail to take appropriate action, within their power, for the performance of the duty of obeying those orders, they and the corporate body are both guilty of disobedience and may be punished for contempt. The appeal on behalf of the Municipal Board thus also fails and is dismissed.*

*3.* ***Jyoti Ltd. v. Kanwaljit Kaur Bhasin, 32 (1987) DLT 198***.

*21. Thus, it is clear that the law of contempt is conceived in the public interest. In the present case, I have no doubt, the corporate veil is being blatantly used as a cloak to wilfully*

*disobey the orders of the court—an improper purpose. Lifting the corporate veil, in these circumstances, is imperative to punish improper conduct. Public interest requires the corporate veil must be lifted to find out the person who disobeyed the order of the court."*

19. It is thus submitted that respondent No. 7 Company as well as its Directors/ Officers In-charge are guilty of willful disobedience and should be punished under Section 12 of the Contempt of Courts Act.

20. *Per contra*, learned counsel for the respondents at the outset submitted that there is at best a compromise arrived at between the parties and there is no categorical undertaking given by the respondents to a Court. In such a case, the contempt petition does not lie and at best the petitioner would have a right to enforce the compromise decree through the process of execution. In support of his submission on the maintainability of the petition, the learned counsel has relied upon a judgment of the Apex Court in the case of ***Babu Ram Gupta Vs. Sudhir Bhasin (1980) 3 SCC 47.*** I quote the relevant para as under:-

*"There is a clear-cut distinction between a compromise arrived at between the parties or a consent order passed by the court at the instance of the parties and a clear and categorical undertaking given by any of the parties. In the former, if there is violation of the compromise or the order no question of contempt of court arises, but the party has a right to enforce the order or the compromise by either executing the order or getting an injunction from the court."*

21. Learned counsel for the respondents, further submits that the respondents are not in willful disobedience or willful breach of any

settlement or undertaking or order of any Court. It is contended that the petitioner being a sole proprietor of Jai Enterprises has been in business of supplying building material to contractors for construction of residential complexes, hospitals, etc., at various sites. Respondent No. 7 is a Public Limited Company, which had entered into a building contract for re-development plan for Lady Hardinge Medical College and Associated Hospitals. The petitioner had supplied building material for the project to respondent No. 7 between April 2013 and September 2015. Some outstanding amount remained due towards the petitioner and the petitioner had filed a suit against respondent No. 7 for the said outstanding amount of Rs.10.2 lakhs. It is submitted that in April 2017, respondent No. 7 settled with the petitioner and undertook to make the balance payment. The contention is that the petitioner has supplied the building material to respondent No. 7 and not to any past or present Directors of respondent No. 7, and thus respondent Nos. 1 to 6 have been wrongly arrayed in this petition. The petitioner had not arrayed respondent Nos. 1 to 6 in the suit and this would be evident by a bare perusal of the memo of parties in the plaint. It is submitted that even the undertaking was given by respondent No. 7 and not respondent Nos. 1 to 6.

22. Learned counsel submits that on 05.05.2017, respondent No. 7 made payment of the first installment but his business suffered mounting debts. On 18.05.2017, ICICI Bank, one of respondent No. 7's significant financial creditors recalled its financial assistance to respondent No. 7, amounting to Rs.412 crores and on 30.05.2017, the ICICI Bank issued notice under Section 13(2) of the SARFAESI Act.

23. On 20.06.2017, respondent No. 7 applied under Section 10 of the IBC requesting for Insolvency Resolution process to be set in motion, giving a full and true account of all its assets and liabilities. It is further submitted that alongwith the application, a list of respondent No. 7's creditors viz. 25 Financial Creditors and 954 operational creditors were filed, to whom respondent No. 7 owed approximately 3146.23 crores and 42.9 crores respectively. It is submitted that the petitioner was listed at Serial No. 341 of the list of operational creditors and the debts towards him was stipulated at 14.44 lakhs, i.e., the decretal amount plus interest in the suit.

24. It is further stated by the counsel for the respondents that on 20.06.2017, the NCLT admitted respondent No. 7's petition and appointed an Interim Resolution Professional (IRP) to take over its management. With the appointment of the IRP, the powers of the Board of respondent No. 7 stood suspended by virtue of Section 17 IBC and the management vested in the IRP. Thus, the Board of Directors lost control of respondent No. 7.

25. The IRP constituted a Committee of Creditors under Section 21 of the IBC and floated several schemes for revival of the Company, but no success was achieved. Finally, on 20.03.2018, after going through the statutory processes, the IRP applied to NCLT to liquidate the Company and reported that respondent No. 7 owed sums to the tune of Rs.2000 crores and he had received claims from various financial and operational creditors employees, statutory authorities, etc.

26. Based on the above stated chronology of facts, learned counsel for the respondents contends that the respondents had certainly not benefited from the Company going under the IBC process as they actually lost control of the Company with the appointment of the IRP. After the undertaking given by respondent No. 7, in April 2017, the respondents had never disputed or denied its liability towards the petitioner. However, the petitioner is now entitled to the satisfaction of the decree only through the route of IBC proceedings. It is submitted that the petitioner is in a queue as one of the 328 operational creditors and cannot be allowed preferential treatment by breaking the queue.

27. It is further contended that by the present contempt proceedings the petitioner is seeking execution of his decree outside the IBC proceedings, which would be against the process under the Insolvency and Liquidation mandated by the IBC.

28. As regards the payment of amount of Rs.1,50,000/- by demand draft on 19.02.2018 is concerned, it is submitted that respondent Nos. 2, 3 and 4 were accused in complaint case under Section 138 of the Negotiable Instruments Act and paid the said amount to compound the complaint in terms of the judgment of the Apex Court in ***Damodar S. Prabhu vs. Syed Babu Lal,*** **(2010) 5 SCC 663**. Moreover, the demand draft was paid by these respondents from their personal account and not from the account of respondent No. 7.

29. Learned counsel contends that from what has been stated above, it is clear that the respondents are not in willful disobedience or willful breach as it is the process under the IBC proceedings which is

preventing them from satisfying the decree of the petitioner. Law does not permit the respondents to give preferential treatment to the petitioner as he is only one of the operational creditors and that too, way down in the seriatim. Learned counsel relies upon the judgment of the Apex Court in ***Ashok Paper Kamgar Union vs. Dharam Dhoda & Others,*** **(2003) 11 SCC 1**, for the proposition that the word 'willful' in section 2 of the Contempt of Courts Act means an act or omission done voluntarily and intentionally with the specific intent to do something the law forbids or with an intent to omit to do something, that the law requires to be done. In order to constitute contempt, the order of the Court must be of such a nature which is capable of execution in normal circumstances.

30. Learned counsel also relies on the judgments in the case of ***Niyaz Mohammad & Others vs. State of Haryana and Others,*** **(1994) 6 SCC 332**, where the Apex Court held that while the contemnors had not obeyed the judgment and released the salary, but this disobedience was not willful so as to amount to a civil contempt and the Court drew a distinction between a Court executing an order and punishing for contempt. I quote the relevant portion of the said judgment as under:

> *"The Civil Court while executing a decree against the judgment debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was willful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequences thereof. But .... Before any such contemnor is held guilty and punished, the Court has to record a finding that such disobedience was willful and intentional. If ...the Court is satisfied that although there has been a disobedience but such* ***disobedience is the result of some compelling circumstances*** *which it was not possible for the*

*contemnor to comply with the order, the Court may not punish the alleged contemnor."*

31. Further reliance is placed on the judgment of ***Dushyant Somal vs. Sushma Somal, (1981) 2 SCC 277*** and I quote the relevant portion:

> *"... Where the person alleged to be in contempt is able to place before the court sufficient material to conclude that it is impossible to obey the order, the court will not be justified in punishing the alleged contemnor."*

32. Further reliance is placed on the judgment of the Apex Court in ***Kanwar Singh vs. High Court of Delhi,*** **(2012) 4 SCC 307**, the relevant portion of is as under:

> *"... Law does not permit to skip the remedies available under Order XXI Rule 32 CPC and resort to the contempt proceedings for the reason that the court has to exercise its discretion under the Act 1971 when an effective and alternate remedy is not available to the person concerned. Thus, when the matter relates to the infringement of a decree or decretal order embodies rights, as between the parties,* ***it is not expedient to invoke and exercise contempt jurisdiction, in essence, as a mode of executing the decree*** *or merely because* ***other remedies may take time or are more circumlocutory in character.*** *Thus, the violation of permanent injunction can be set right in executing the proceedings and not the contempt proceedings."*

33. It is thus submitted by the respondents that there is no willful default and the present proceedings cannot be indirectly used by the petitioner to execute the order in view of the pendency of the proceedings under the IBC and thus prays that the contempt petition be dismissed.

34. I have heard the learned counsel for the parties.

35. Before I decide on the issue whether the respondents are guilty of contempt as alleged by the petitioner, the preliminary objection on the maintainability of the contempt petition would have to be addressed. The contention of the petitioner is that there is a compromise decree in his favour and the same can be enforced by way of contempt proceedings and no distinction can be drawn between a decree passed on merit and a decree by way of consent. The contention of the respondents on the other hand is that the compromise decree does not contain any undertaking to the Court and mere non-compliance of the terms of the compromise decree cannot be the basis of a contempt petition. Only those consent or compromise orders which are coupled with undertakings or injunctions can be the subject matter of contempt jurisdiction.

36. Having given my thoughtful consideration to the preliminary objection, I am of the view that the learned counsel for the respondents is not correct in his submission that the contempt proceeding is not maintainable. The Apex Court in the case of ***Babu Ram Gupta (supra)*** has held that in the absence of an undertaking, the non-compliance of a compromise decree or consent order would not amount to contempt of Court. It was also held that it is only when there is a breach of clear undertaking given to the Court that it amounts to a contempt of Court and not otherwise. However, the judgment in the case of ***Babu Ram Gupta (supra)*** was considered and distinguished by the Apex Court in the case of ***Rama Narang vs. Ramesh Narang & Ors. (2006) 11 SCC 114***. The Apex Court in the case of ***Rama Narang (supra)*** observed that the question which was

before the Apex Court in ***Babu Ram Gupta (supra)*** was limited to the issue whether the appellant had given any undertaking to the Court which he had violated, i.e. the question was limited to the second category of cases mentioned under Section 2(b) of the Act. The Court was not called upon to decide whether there was any contumacious conduct as envisaged by the first category of cases under that Section. The observations in ***Babu Ram Gupta (supra)*** were held to be obiter by the Apex Court in the case of ***Rama Narang (supra)***. The Apex Court further observed in the case of ***Rama Narang (supra)*** that if the observations in the case of ***Babu Ram Gupta (supra)*** were to be accepted as an enunciation of law, it would be contrary to the language of the statute. The Court further observed that the Section itself provides that willful violation of *any* order or decree etc. would tentamount to contempt and a compromise decree is as much a decree as any other decree passed on adjudication. In passing a decree by consent, the Court adds its mandate to the consent and thus it is composed of both a command and a contract. The provisions of Order XXIII Rule 3 CPC require the Court to pass a decree in accordance with the consent terms only when it is proved to the satisfaction of the Court that the suit has been adjusted wholly or in part by any lawful agreement. The Apex Court further held that merely because an order or decree is executable, would not take away the Court's jurisdiction to deal with a matter under the Contempt of Court's Act, provided the Court is satisfied that the violation is such that it would warrant punishment under Section 13 of the Act. Finally, the Apex Court held that it would neither be in consonance with the Statute nor judicial

authority or principle or logic to draw any distinction between the willful violation of the terms of a consent decree and a decree passed on adjudication. The Court held that the decision in ***Babu Ram Gupta (supra)*** would have to be limited to its own peculiar facts.

37. From a reading of the judgment of the Apex Court in the case of ***Rama Narang*** , it is clear that a contempt petition would lie in case there is a violation or non-compliance of a compromise or a consent decree and merely because execution is one of the remedy available to the decree holder, it cannot be said that the Court's jurisdiction to deal with the matter under the Contempt of Courts Act is taken away. Following the ratio of the judgment in the case of ***Rama Narang (supra)***, the preliminary objection raised by the respondents regarding the non-maintainability of the petition is rejected.

38. On merits, it is contended by the petitioner that there has been a willful disobedience of the settlement agreement and the compromise decree passed by the Civil Court. The respondents never had any intention to make good the payment as even prior to the appointment of the IRP, it had defaulted twice and the cheques had bounced. The plea of the appointment of IRP raised by the respondents is sought to be defended by the petitioner on the ground that the payment was made by the respondent of an amount of Rs. 1,50,000/- on 19.02.2018, which was seven months after the appointment of the IRP.

39. The respondents *per contra* has contended that there is no "willful disobedience" or "willful breach" by the respondents. The

respondents have made every endeavor to pay the outstanding dues but after making the payment of the first installment, the business of respondent No. 7 suffered and there were mounting debts. The ICICI Bank which was one of the significant financial creditors recalled its financial assistance amounting to 412 Crores and notice was issued under Section 13(2) of the SARFAESI Act. On 20.06.2017, respondent No. 7 had applied under Section 10 of the IPC for Insolvency Resolution Process to be set in motion and thereupon the NCLT appointed an IRP to take over the management of respondent No. 7. All attempts to revive the Company failed and on 20.03.2018, the IRP applied to NCLT to liquidate the Company. The respondents further contend that the petitioner is one of the 328 operational creditors and the respondents cannot break the queue to satisfy the decree.

40. Section 2(b) of the Contempt of Courts Act, 1971 which is relevant for the adjudication of this case, reads as under:

> "2. Definitions
>
> In this Act, unless the context otherwise requires-
>
> XXXXX
>
> (b) "civil contempt" means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;"

41. In the case of ***Niaz Mohammad & Ors. (supra)***, the Apex Court has held that the framers of the Act while defining civil contempt have said that it must be willful disobedience of any judgment, decree etc.

and therefore, before a contemnor is punished for non-compliance of a direction of a Court, the Court must not only be satisfied about the disobedience, but should also be satisfied that such disobedience was willful and intentional. If from the circumstances of a particular case the Court is satisfied that although there has been a disobedience, but the disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the Court would not punish the alleged contemnor. The Apex Court in the case of ***Dinesh Kumar Gupta vs. United India Insurance Company Ltd. (2010) 12 SCC 770***, while analyzing Section 29(b) of the Contempt of Courts Act, 1971 held as under:

> "17. This now leads us to the next question and a more relevant one, as to whether a proceeding for contempt initiated against the appellant can be held to be sustainable merely on speculation, assumption and inference drawn from facts and circumstances of the instant case. In our considered opinion, the answer clearly has to be in the negative in view of the well-settled legal position reflected in a catena of decisions of this Court that *contempt of a civil nature can be held to have been made out only if there has been a wilful disobedience of the order and even though there may be disobedience, yet if the same does not reflect that it has been a conscious and wilful disobedience, a case for contempt cannot be held to have been made out. In fact, if an order is capable of more than one interpretation giving rise to variety of consequences, non-compliance with the same cannot be held to be wilful disobedience of the order so as to make out a case of contempt entailing the serious consequence including imposition of punishment. However, when the courts are confronted with a question as to whether a given situation could be treated to be a case of wilful disobedience, or a case of a*

*lame excuse, in order to subvert its compliance, howsoever articulate it may be, will obviously depend on the facts and circumstances of a particular case; but while deciding so, it would not be legally correct to be too speculative based on assumption as the Contempt of Courts Act, 1971 clearly postulates and emphasises that the ingredient of wilful disobedience must be there before anyone can be hauled up for the charge of contempt of a civil nature*.

xxx xxx xxx

23. Besides this, it would also not be correct to overlook or ignore an important statutory ingredient of contempt of a civil nature given out under Section 2(*b*) of the Contempt of Courts Act, 1971 that the disobedience to the order alleging contempt has to satisfy the test that it is a wilful disobedience to the order. Bearing this important factor in mind, it is relevant to note that a proceeding for civil contempt would not lie if the order alleged to have been disobeyed itself provides scope for reasonable or rational interpretation of an order or circumstance which is the factual position in the instant matter. It would equally not be correct to infer that a party although acting due to misapprehension of the correct legal position and in good faith without any motive to defeat or defy the order of the Court, should be viewed as a serious ground so as to give rise to a contempt proceeding.

24. To reinforce the aforesaid legal position further, it would be relevant and appropriate to take into consideration the settled legal position as reflected in the judgment and order delivered in *Ahmed Ali* v. *Supdt., District Jail* [1987 Cri LJ 1845 (Gau)] as also in *B.K. Kar* v. *High Court of Orissa* [AIR 1961 SC 1367 : (1961) 2 Cri LJ 438] that mere unintentional disobedience is not enough to hold anyone guilty of contempt and although disobedience might have been established, absence of wilful disobedience on the part of the contemnor, will not

> hold him guilty unless the contempt involves a degree of fault or misconduct. Thus, accidental or unintentional disobedience is not sufficient to justify for holding one guilty of contempt. It is further relevant to bear in mind the settled law on the law of contempt that casual or accidental or unintentional acts of disobedience under the circumstances which negate any suggestion of contumacy, would amount to a contempt in theory only and does not render the contemnor liable to punishment and this was the view expressed also in *State of Bihar* v. *Rani Sonabati Kumari* [AIR 1954 Pat 513] and *N. Baksi* v. *O.K. Ghosh* [AIR 1957 Pat 528]."

42. In the case of ***Jiwani Kumari Parikh vs. Satyabrata Chakravorty (1990) 4 SCC 737***, the Apex Court held as under:

> "6. In our opinion, before a party can be committed for contempt, there must be a willful or deliberate disobedience of the orders of the court. In the present case, we do not find that any such willful or deliberate or reckless disobedience of our order dated January 16, 1990, has been committed by the respondent to the contempt petition. Hence, the contempt petition is dismissed….."

43. The occasion to interpret and analyse the effect of Section 2(b) again arose in the case of ***Ashok Paper Kamgar Union (supra)***. The Apex Court in the said case held as under:

> "17. Section 2(b) of the Contempt of Courts Act defines "civil contempt" and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of undertaking given to a court. "Wilful" means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done

> with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extraordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case. …"

44. In the case of ***Gyani Chand vs. State of A.P. (2016) 15 SCC 164***, the Apex Court reiterated that to hold somebody guilty of contempt of Court, the concerned person must have willfully disobeyed any judgment, decree etc. or should have willfully committed breach of an undertaking given to a Court.

45. Very recently, a Division Bench of this Court has decided an appeal under Section 19 of the Contempt of Courts Act, against an order of the Single Judge, wherein the appellants had been held guilty of contempt for non-compliance of an undertaking given to the Court. The Division Bench while deciding the appeal has referred to various judgments of the Supreme Court including the one in the case of ***Rama Narang (supra)***. The Division Bench has, in great details, analysed the meaning of the term willful disobedience. The Court has also relied upon the judgment in the case of ***Bank of Baroda vs. Sadruddin Hasan Daya (2004) 1 SCC 360***. The relevant extract from the judgment of the Apex Court is as under:

> "14. The respondents had filed consent terms in this Court but the same contained an undertaking that they would not alienate, encumber or charge the properties to anyone until the decree was satisfied. Acting upon this

undertaking and the consent terms, this Court passed the decree whereunder the respondents (defendants) were given the facility of depositing the amount in eight quarterly instalments commencing from 1-11-1999 to 1-8-2001. This Court, therefore, put its imprimatur upon the consent terms and made it a decree of the court. The violation or breach of the undertaking which became part of the decree of the court certainly amounts to contempt of court, irrespective of the fact that it is open to the decree-holder to execute the decree. Contempt is a matter between the court and the alleged contemner and is not affected in any manner by the rights or obligations of the parties to the litigation inter se.

15. Shri Nariman has referred to the affidavit filed by Respondent 1 before the Debts Recovery Tribunal, Bombay in the recovery proceedings initiated by Oman International Bank, SAOD and has submitted that the respondents have no money or assets apart from the immovable property, which is lying under attachment, to pay the amount. The learned counsel has also submitted that the respondents have themselves tried their best to secure a purchaser for the property at Versova which is the only valuable property in order to pay the amount to the petitioner. Copy of a letter sent to the Recovery Officer, Debts Recovery Tribunal-II, Bombay on 10-10-2003 by the solicitors of an intending buyer, who had made an offer to purchase the said property for Rs 3 crores along with a demand draft of Rs 30 lakhs was also placed before us. Shri Rohatgi, learned Additional Solicitor General has, on the other hand, submitted that apart from Oman International Bank, SAOD, one Shiraj Taher Alli Lokhandwala has also obtained a money decree against the respondents due to which several problems have arisen in executing the decree and realizing the amount. In the present proceedings we are basically concerned with the violation or breach of the undertaking given by the respondents. Shri C.A. Sundaram, learned Senior Counsel, has submitted that Respondent 2 was not personally present and the

> undertaking was given by him through a power of attorney. In our opinion, the mere fact that Respondent 2 was personally not present and the undertaking and the consent terms were given through a power of attorney will make no difference as he also got benefit under the consent decree passed by this Court."

46. Traversing through the judgments referred to above, what emerges is that in order to hold a person guilty of civil contempt, it has to be established by the person alleging contempt that the alleged contemner was guilty of a willful breach or a willful disobedience of an order or a direction, decree etc. of any Court. The emphasis, therefore, has to be on the word willful. The word 'willful' means an act or omission which is done voluntarily and with an intent to do something which is forbidden by law or failing to do something which the law requires to be done. The Apex Court in the case of ***Niaz Mohammad & Ors. (supra)*** had the occasion to explain "willful disobedience" as used in Section 2(b) of the Contempt of Courts Act. It was held that before a contemnor is punished for non-compliance of the direction of a Court, the Court must be satisfied not only of the fact that there is disobedience of a judgment or decree or direction but also must satisfy itself that such disobedience was willful and intentional. The Civil Court in an execution proceeding is not concerned whether the disobedience is willful or otherwise and once a decree is passed, it is the duty of the Court to execute it. On the other hand, while examining the grievance of a person who has invoked the contempt jurisdiction, the Court has to record a finding of willful and intentional disobedience. If from the circumstances of a particular

case, the Court is satisfied that there has been a disobedience but the same is a result of some compelling circumstances, under which it was not possible for the contemnor to comply with the order, the Court may not punish the alleged contemnor.

47. In view of the law laid down by various judgments mentioned above, it now needs to be examined whether the act of the alleged contemnor can be termed as willful disobedience or not. The question, therefore, that arises is whether by not paying the money to the petitioner in terms of the compromise decree, the respondents have willfully disobeyed the order, with an intent to do so or there are any compelling circumstances, which has prevented the respondents from paying the balance amount in terms of the compromise decree.

48. The defence of the respondents to the present petition is that the respondents had initially made part payments in satisfaction of the compromise decree but soon thereafter the business of the Company suffered mounting debts. The ICICI Bank, one of its significant financial creditors, recalled its financial assistance to the tune of 412 Crores and the Bank issued notice under the SARFAESI Act. Respondent No. 7 thereafter applied under Section 10 of the IBC asking for Insolvency Resolution process to be set in motion. An IRP was appointed to take over the management and the powers of the Board of respondent No. 7 were suspended. The IRP has applied to the NCLT to liquidate the Company. Respondent No. 7 owes over Rs. 2000 Crores to various creditors. Respondent No. 7 has a list of several financial creditors and operational creditors and the petitioner is one of the operational creditors way down in the seriatim. The

respondents, are therefore, prevented by operation of law from jumping the queue and paying the balance amount to the petitioner in satisfaction of the compromise decree.

49. Let me now examine the defence of the respondents in the light of the law and the facts, which are more or less undisputed. The petitioner has not disputed or rebutted that the moratorium has been issued, the IRP has been appointed and liquidation proceedings are pending against respondent No. 7 in the NCLT. The power and management of the Board of respondent No. 7 now vests in the IRP. Respondents cannot, at this stage, break the queue and allow preferential treatment to the petitioner, over the other financial and operational creditors, to discharge their liability under the compromise decree. Learned counsel for the respondents is thus right in his contention that the disbursement of payments by the respondents to clear the liabilities towards its creditors, including the petitioner, would be governed by the proceedings under the IBC and thus the respondents are prevented by law to satisfy the decree in favour of the petitioner and there is no willful disobedience of the compromise decree. No doubt that the petitioner has a compromise decree in its favour and is entitled to the amount under the said decree, but until the petitioner is able to prove that there is willful disobedience, the respondents cannot be punished for civil contempt under the Contempt of Courts Act.

50. The Apex Court has in several judgments drawn a clear distinction between an Executing Court and a Court exercising jurisdiction under the Contempt of Courts Act. As a Contempt Court,

one would have to examine the circumstances and come to a finding that there is willful disobedience. In my view, the respondents have been able to make out a case that the disobedience is neither willful nor intentional. Pending the IBC proceedings, the respondents are justified in not giving preferential treatment to the petitioner towards satisfaction of the compromise decree. In my opinion, therefore, the respondents cannot be held guilty of contempt under the Contempt of Courts Act.

51. I also do not agree with the contention of the petitioner that because some amount was paid initially through the cheques, there was a *malafide* intent not to pay further, and therefore, a contempt is made out. The chronology of dates and events shows that after the initial installment was paid, the respondent No.7 suffered losses and the ICICI Bank had issued notice under the SARFAESI Act and soon thereafter, the IRP was appointed and liquidation proceedings started. While this may be an unfortunate coincidence, but the fact of the matter is that pending the insolvency proceedings, the respondents cannot pay to the petitioner by jumping the queue. In response to the contention of the petitioner that the representative of respondent No. 7 had given a Demand Draft of Rs. 1,50,000/- even after the appointment of the IRP, and therefore, the rest of the money should also be paid, the respondents have clarified that the petitioner had filed a criminal complaint under Section 138 of the Negotiable Instruments Act (NIA) against respondent No. 7 for the dishonor of the cheque towards the second installment and some of the respondents were named as accused in view of Section 141 of the NIA. It was in this

background that on 19.02.2018, a Demand Draft of Rs. 1.5 Lacs was paid by respondent Nos. 2, 3 and 4 and this was not from the account or the money of respondent No. 7.

52. In my view, this fact also does not further the case of the petitioner that the respondents are guilty of willful disobedience. Learned senior counsel for the petitioner has relied upon the judgments in the case of ***Skipper Contruction (supra)***, ***Aligarh Municipal Board (supra)*** and ***Jyoti Limited (supra)*** to contend that the Directors and the Officers of the respondent Company would also be liable for contempt as the Courts have lifted the corporate veil and on finding guilty, have punished the Directors/Officers In-Charge responsible for the business. In my view, these judgments do not apply to the present controversy which essentially revolves around the alleged willful disobedience of the respondents in discharging the liability under the compromise decree and the defence of the respondents that they are being prevented in complying with the decree, by operation of law.

53. Learned senior counsel for the petitioner has placed reliance on the judgment of the Bombay High Court in the case of ***Tayal Cotton Pvt. Ltd. vs. State of Maharashtra & Ors. in Criminal Writ Petition No. 1437/2007 decided on 06.08.2018***, to contend that when a moratorium is issued under Section 14 of the IBC, it prohibits institution of suits or execution against the judgment or a decree but does not prohibit the criminal proceedings. The argument is that moratorium issued under Section 14 of the IBC will not come in the way of the contempt Court exercising its powers under Article 215 of

the Constitution of India and the Contempt of Courts Act. A bare reading of the judgment in the case of ***Tayal Cotton (supra)*** shows that in the said case a complaint under Section 138 of the NIA had been filed against the Company and its Directors and in that context, the question had arisen whether Section 14 of the IBC would come in the way of those criminal proceedings. It was in this background that the Court had held that criminal proceedings could continue despite a moratorium under Section 14 of the IBC. The said judgment would have no application in the present case as in this case, there are no criminal proceedings and what is filed before this Court is a petition under Sections 10 and 12 of the Contempt of Courts Act, read with Article 215 of the Constitution of India and is in the nature of civil contempt.

54. The next judgment relied upon by the learned senior counsel for the petitioner is the judgment of a Single Bench of this Court in the case of ***Deputy Director, Directorate of Enforcement, Delhi vs. Axis Bank & Ors. in Criminal Appeal No. 143/2018 decided on 02.04.2019***. In the said case, the Court was considering a challenge to a decision of the Appellate Tribunal under the PMLA which had held that SARFAESI, IBC and RDBA prevailed over the PMLA and this Court had reversed the finding of the Appellate Tribunal holding that these Acts operated in their own spheres. In reaching the said finding, the Court found that even where there were assets in the name of the persons against whom there was material to show complexity in money laundering, the prerogative power of the State to act under PMLA could not jeopardize the bonafide third party claimant's

interests in those assets. In my view, the said judgment is of no avail to the petitioner. In fact, by following this judgment, the proceedings under the IBC in which claims of third parties against respondent No. 7 are being adjudicated, are the appropriate proceedings for determining whether the petitioner would get priority over the third-party claimants. Any direction by this Court in contempt proceedings would virtually amount to overriding the proceedings under the IBC which are the appropriate proceedings for determining the settlement of claims of the petitioner in the order of priority amongst the list of claimants therein. I am afraid that in the present proceedings, no direction can be given by this Court to the respondents to give any preferential treatment to the petitioner and satisfy the decree. Neither can an order be passed to punish the respondents in view of my finding above that there is no willful disobedience.

55. In the absence of any willful disobedience by the respondents, this Court cannot grant the relief sought for by the petitioner and I am fortified in my view by the judgment of the Apex Court in ***Mohd. Iqbal Khanday vs. Abdul Majid Rather (1994) 4 SCC 34*** and ***K.L. Arora vs. S.S. Prasad & Anr. (2000) 10 SCC 89***. In the case of ***Mohd. Iqbal (supra)***, the appellant did not comply with the orders directing it to grant ad hoc promotion. The appellant contended that the compliance could not be done as granting the promotion would be contrary to a particular Rule. The Apex Court held as under:

> "…. In such a situation the insistence of the courts on implementation may not square with realities of the situation and practicabilities of implementation of the court's direction. In our considered view, hooking a party to contempt

> proceedings and enforcing obedience to such orders hardly lends credence to judicial process and authority; more so, in the peculiar facts and circumstances of the case. The court must always be zealous in preserving its authority and dignity but at the same time it will be inadvisable to require compliance of an order impossible of compliance at the instance of the person proceeding against for contempt. Practically, what the court by means of the contempt proceedings seek is an execution which cannot be approval."

56. In ***K.L. Arora (supra)***, the Apex Court had accepted the defence of the respondent for non-compliance of the order directing payment of compensation to the petitioner wherein the respondent claimed that on account of pending departmental proceedings, the payment could not be done as the charge was of misappropriation.

57. In view of the observations made above, the respondents cannot be held guilty of the alleged contempt for the present. However, if in future the respondent Company is revived or any fresh cause of action arises in favour of the petitioner, this judgment will not come in the way of the petitioner seeking a remedy available to him in law.

58. The present petition is hereby dismissed and the notice of contempt is accordingly discharged.

**JYOTI SINGH, J**

**AUGUST 9th, 2019**
pkb/AK/rd