



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CACP No. 7 of 2018 (O&M)
in COCP No. 729 of 2014
Reserved on: 8.1.2025
Pronounced on: 28.1.2025

Pritpal Singh Grewal

.....Appellant

Versus

Gurlal Singh Grewal

....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Ms. Munisha Gandhi, Sr. Advocate assisted by
Mr. Vaibhav Sharma, Advocate,
Mr. Adarsh Dubey, Advocate and
for the appellant.

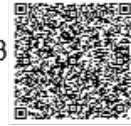
Mr. A.S.Narang, Advocate
Ms. Ishita Kaur, Advocate,
Ms. Manpreet Kaur, Advocate and
Mr. Satbir Singh, Advocate
for the respondent.

SURESHWAR THAKUR, J.

1. The instant appeal has been directed against the order dated 30.10.2018, as passed by the learned Contempt Bench of this Court in COCP No. 729 of 2014.

Brief facts of the case.

2. The respondent herein filed C.P. No. 49 of 2007 under Sections 397 and 398 of the Companies Act before the Company Law Board, Principal Bench, New Delhi (for short 'the CLB'), alleging therein oppression and mismanagement in the affairs of Upper India Steel Manufacturing and Engineering Company. On 8.5.2007, the CLB passed an interim order on the petition (supra). The relevant portion of



the order (supra) becomes extracted hereinafter.

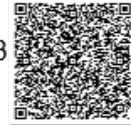
- “(1) The company/respondent shall maintain status quo as of date of the fixed assets, the composition of the board and any holding in the company.*
- (2) In case of sale of any asset, the same should not be done without being in the agenda and approved by the board.*
- (3) A fortnightly statement of receipts and payments is to be furnished to the petitioners effective from 1st May, 2007.*
- (4) For all board meetings, 15 days notice should be given to the petitioners.”*

3. Since the order (supra) remained purportedly uncomplied, thereby the respondent herein preferred COCP No. 729 of 2014, before this Court, with a prayer therein to initiate contempt proceedings against the contemnor concerned, thus on account of the appellant herein purportedly wilfully disobeying the order (supra) passed by this Court. It has been further alleged therein, that even after the passing of the order (supra), the respondents concerned have not complied with the directions of the CLB, which amounts to wilful disobedience on their part.

4. The learned Contempt Court concerned, vide order dated 30.10.2018, passed the hereinafter order upon the COCP (supra).

“x x x x

9. After having scrutinized the record and hearing arguments of both the counsels, this Court finds that undisputed fact emerging from record are that respondents sought permission of Board of Directors before selling a number of machines whereas no permission was sought to dismantle afore-stated rolling mills. The respondents are not disputing the fact of dismantling the machines which were undisputedly assets of the company and were subject to interim order passed by CLB. The Court finds that respondents have violated interim order of CLB which amounts to contempt of Court. The



respondents deserves to be punished for their wilful disobedience of order of CLB.

10. *The contention of Ld. Senior Counsel that interim order of CLB merged into final order and petition of petitioner was not allowed so there was no contempt is misconceived and bereft of merits. If contention of Ld. Counsel is accepted, there would be no need to comply with interim orders which would result into travesty of justice as well as erode the majesty and dignity of judicial forums. The Hon'ble Supreme Court in the case of "**Tayabbhai M. Bagasarwalla Versus Hind Rubber Industries Pvt. Ltd. 1997(3) SCC 443** has clearly held that non compliance of interim order would entail contempt of Court and contemnor cannot take plea of passing of final order. Similar view has been expressed by Allahabad High Court in the case of **Naresh Chandra Kapoor Versus O.P.S. Malik 2004 CriLJ 2392**. Therefore, plea of Ld. Senior Counsel is rejected and the respondents are held guilty of disobedience of orders of CLB.*

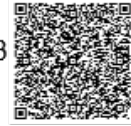
The respondents are hereby called upon to appear before this Court in person on 14.11.2018 and show cause as to why they should not be sentenced to imprisonment as prescribed under Contempt of Courts Act, 1971. "

5. The order (supra), passed by the learned Single Judge (Contempt Court) has caused pain to the appellant herein and has led him to file thereagainst the instant appeal before this Court.

6. The company petition (supra) became decided by the National Company Law Tribunal, Chandigarh (for short 'the NCLT') on 1.3.2017, after the matter became transferred to it, post the apposite notification, whereby all the matters were transferred from the CLB to the NCLT. The relevant paras of the order (supra) become(s) extracted hereinafter. However, since the supra interim order became rendered, thus prior to the constitution of the NCLT, and, also when the interim order became passed at a phase when this Court enjoyed jurisdiction over the subject matter, thereby it appears that the instant motion for contempt became reared before this Court.

"x x x x

3.8 *After considering and weighing all the facts, arguments*



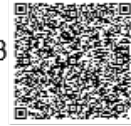
made by the petitioners and respondents, and the judgments cited by them, we are convinced that the petitioners and respondents cannot get along and conduct business of the company. Both the parties have agreed to the parting of the ways by giving exit to the petitioners. We hold that It would be just and proper that the respondent group namely, R-2 to R-13 and particularly R-2 and R-3, who are admittedly in the control of the affairs of the company be directed to buy out the shares held by the petitioners in the company at a fair price to be determined by an Independent valuer. The instant petition therefore stands disposed of with the following orders:

A. As discussed in para 1.2 above of the judgement, the alleged violators of section 314 namely, S.Gursimran Singh Grewal (R-3), S.Paramvir Singh Grewal (R-4), S.Saminder Singh Grewal (R-6), S.Mandeep Singh Grewal (R-10) and Mrs. Harsimran Dutta (R-11) are required to refund to the respondent company, the amount paid to them in excess of the permissible limits u/s 314 along with interest payable at the bank rate enhanced by 2% within 30 days of receipt of this order. For this purpose, the bank rate applicable as on 31st March of each of the financial year shall be taken.

B. M/s Ernst & Young, 6th floor, Wing A & B, Worldmark-1, Aero City, IGI airport Hospitality District, Opp. Holiday Inn, Mahipalpur, New Delhi 110037 is appointed from out of the list of valuers submitted by the petitioners and agreed to by the respondents, as an independent valuer for fair value of the shares held by the petitioners of the company. The cut- off date for determining the value of the shares will be 31.3.2007 i.e. the date nearest to the filing of the petition. While computing the share value, the Valuers shall also consider the asset based valuation as the Respondent Company has a large asset base.

*C. The date of filing of the petition is April 2007. Hence, the said valuer will find out the (**illegible**) value of the shares of the company as on 31.3.2007 on the basis of going concern by all recognised methods and applicable rules and regulations as applicable on the said date in this regard. The respondent company is being managed by the respondents only since the filing of the petition and thus, they are alone responsible for any Increase or decrease in both the profitability and liability of the company. As the date of valuation is almost 10 years ago, the fair price of the shares of the petitioners shall be enhanced by compound interest payable at the bank rate enhanced by 2%. For this reason, the bank rate applicable as on the 31st March of each of the financial year shall be taken.*

D. The parties are directed to extend every co-operation to the said Valuer. The company shall submit all the necessary documents and papers for the purpose of valuation as desired /



required by the said Valuer.

E. The valuation report shall be prepared within 90 days from the date of receipt of copy of this order.

F. Copy of the report shall be supplied to the parties who shall be entitled to file their respective objections, if any, to the valuation of the shares. After receipt of the objections the valuer shall dispose of the same within four weeks and shall prepare a comprehensive/speaking supplementary report dealing with each and every objection. Thereafter, the Valuer shall send final report to the parties.

G. After determination of the value of the shares, the respondents 2 to 13 shall pay the amount to the petitioners, other than those who have withdrawn from the petition and whose application for withdrawal is pending (as per the petitioners' shareholding proportions) within 30 days thereof and upon receipt of the amount, the petitioners shall execute all the documents / deeds necessary for the transfer of the shares held by the petitioners of the company in favour of the respondents and/or their nominees within two weeks.

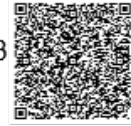
14. In case, the respondents decline to purchase the shares of the petitioners as aforesaid at the determined share value, the petitioners shall have the right to purchase the same from the respondents. The procedure and the time line as detailed above shall be followed.

I. The remuneration of the Valuer shall be negotiated and paid by the company in three equal installments. First installment shall be paid on the commencement of the valuation process and the second installment shall be paid after submission of the valuation report by the Valuer within the stipulated period. The third and final installment shall be paid to the valuer after submission of the final report together with objections and the supplementary report.

J. Other reliefs sought for by the petitioners are declined.

K. Interim order if any stands vacated. This order dispose off all the pending company applications.”

7. Conspicuously the supra order related to the apposite valuations being made, qua the listed shares of the Public Limited Company concerned, and, did not pertain to the making of valuations, vis-a-vis to the plant and machinery owned by the Public Limited Company concerned.



8. The order (supra) passed by the NCLT became challenged before the National Company Law Appellate Tribunal, New Delhi (for short '*the NCLAT*'), and, on the said challenge, the following order was passed.

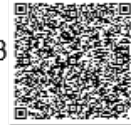
“35. Even if it is accepted that the parties have agreed to sell out their shares, in absence of any power vested with Tribunal, after its specific finding there was no ‘Oppression and Mismanagement, the Tribunal had no jurisdiction to direct any party to sell or buyout any share. Further finding about, the date of valuation/buyout as the date closest to the filing of the petition i.e. 31st March, 2007 being perverse and contrary to the offer made by parties in the year 2008, and the order dated 25th February 2009, passed by Tribunal such order cannot be upheld.

36. For reasons aforesaid, while we uphold the findings of the Tribunal insofar as it relates to failure of petitioners to prove ‘Oppression and Mismanagement’, the last part of the order and direction to the extent of sale of shares, date of valuation/buyout and the order regarding payment of interest and the findings that the minority group have systematically whittled due to non-payment of dividend, and reduction in the number of directors being perverse, such portion of the impugned order are set aside.”

Submissions of the learned senior counsel for the appellant

9. The learned counsels for the appellant has argued before this Court-

(i) That the present case pertains to the makings of purported violations to an order dated 8.5.2007, as became passed by the learned CLB. However, since no reference was made to this Court, by the CLB concerned, pertaining to any alleged violation being made, vis-a-vis its order, whereas, the assumption of jurisdiction, upon the present contempt petition rather was so assumable but only on such a reference becoming made. Resultantly, the wants of makings of the apposite reference by the CLB concerned, to this Court, thus makes the



present contempt petition to be a misconstituted contempt petition, and, also the orders made thereons are *non est*.

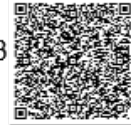
(ii) That the making of a reference to this Court by the Court concerned, thus is not only directory but rather is mandatory, thus to enable the Court concerned, to first examine whether there is any apposite *prima facie* willful disobedience, thus before any notice for action for contempt becoming issued vis-a-vis the alleged contemnor.

(iii) That the instant contempt petition is not maintainable, as the basic jurisdictional requirements, as prescribed in Rule 9(c) of the Contempt of Court (Punjab and Haryana) Rules, 1974 (for short '*the Rules of 1974*'), provisions whereof become extracted hereinafter, rather are not satisfied.

“9. In the case of a civil contempt other than a contempt referred to in section 14, the High Court may take action

- (a) on its own motion; or
- (b) on a petition presented by the party aggrieved; or
- (c) in the case of any civil contempt of a subordinate court, on reference made to it by that Court.

(iv) That with the provisions of Section 23 of the Contempt of Courts Act, 1971 (for short '*the Act of 1971*'), provisions whereof become extracted hereinafter, making contemplations, vis-a-vis the procedures for regulating the exercise of contempt jurisdiction, rather becomes permitted to be created by the High Court, whereupons when this High Court thus formulating the relevant procedural rules, which become nomenclatured as the Rules of 1974. Resultantly, there was a dire requirement qua completest adherence theretos becoming made, rather than the hereafter extracted rules becoming breached, as has



evidently happened in the instant case.

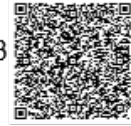
“23. Power of Supreme Court and High Courts to make rules.—

The Supreme Court or, as the case may be, any High Court, may make rules, not inconsistent with the provisions of this Act, providing for any matter relating to its procedure.”

(v) That in case two interpretations are possible to be made, vis-a-vis the apposite order, and, if one of the possible interpretations, thus is favourable to the present appellant, thereby no actionable contumacy emerges, whereby the instant contempt petition, thus was neither maintainable, nor the order passed on the contempt petition, rather acquired any aura of validity. In support of the said arguments, she has placed reliance on a judgment rendered by the Apex Court in a case titled as ***Ram Kishan versus Tarun Bajaj and others reported in 2014(03) AJR 567***, relevant paragraph whereof becomes extracted hereinafter.

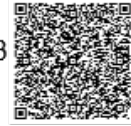
“13. It is well settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act.”

(vi) That the status quo order dated 8.5.2007, as passed by the learned CLB, was limited to only place an embargo against the making of alienations of the assets of the company, but yet the relaxing thereto condition also became comprised in the factum, that if approval theretos becomes granted by the Board, thereby the apposite



alienations being permissible. However, the learned senior counsel submits, that the supra interim order did not either affect, nor stalled the taking of such decisions, which would otherwise make the manufacturing activity undertaken by the company to be effectively/optimally functional, nor the purported contumacious act, as attributed to the present appellant, inasmuch as, the movings of the 12” rolling mill (installed in 1970s) to the company scrapyards after it became defunct in 2012, and, also the utilization of the parts of the machinery, thus for upgrading other operational units, rather to improve efficiency, thus could activate any actionable contempt against the present appellant. Even otherwise, the said is a routinely made decision(s), rather only to ensure, that the Public Limited Company concerned, makes more enriched profiteerings, benefits whereof but would also become endowed to the present respondent, whereby, when no evident loss accrues to the present respondent, thereby an ill indulged into effort rather to rope the present appellant in the present contempt, became so efforted by the present respondent.

(vii) That though Section 12 of the Act of 1971, provides that the accused may be discharged or punishment may be remitted on apology, being made to satisfaction of Court, and, that an apology shall not be rejected merely because it is qualified or conditional, if made bona fide. Resultantly, she submits that irrespective of all the submission which otherwise restrained the drawings of contempt action(s) against the present appellant, yet when the present appellant did deliver an unqualified and unconditional apology rather for any purported contumacious act, thereby the said apology was required to be



accepted, than the same being rejected.

Submissions of the learned counsels for the respondent

10. On the other hand, the learned counsel appearing for the respondent has most vehemently contended-

(i) That the instant contempt appeal is not maintainable before this Court. In making the said submission, he refers to the provisions as embodied in Section 19 of the Contempt of Courts Act, 1971, (hereinafter referred to as 'the Act of 1971') provisions whereof becomes extracted hereinafter, wherein, it becomes mandated, that an appeal against an order passed by the Contempt Bench concerned, is maintainable, but yet only against such an order or a decision, as becomes made by the Contempt Bench concerned, whereby, punishment for contempt becomes recorded.

“19. Appeals.—(1) An appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction “to punish for contempt”—

(a) where the order or decision is that of a single judge, to a Bench of not less than two judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court:

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

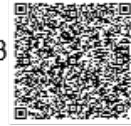
(2) Pending any appeal, the appellate Court may order that—

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).



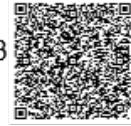
(4) An appeal under sub-section (1) shall be filed—

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.”

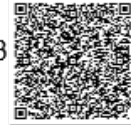
(ii) That since no punishment has been imposed upon the appellant, thereby the supra order is only challengeable, through a motion cast under Article 136 of the Constitution of India, becoming made before the Apex Court, than through the filing of the instant appeal before this Court. Moreover, he also submits that thereby the impugned order was also challengeable only through an intra-court appeal becoming raised before this Court. Resultantly, he submits, that thereby the present appeal is premature, as the appellant would become bestowed with the able remedy to make a contempt appeal before this Court only when pursuant to the passing of the impugned order, thus punishment becomes imposed upon the present appellant, whereas reiteratedly, no punishment becomes yet imposed upon the present appellant.

(iii) That in the proceedings for contempt, the High Court is required to be deciding whether any contempt of Court is committed and, if so, what should be the punishment and the matter incidental thereto. He further submits, that since the clear mandamus (supra) as becomes embodied in the order (supra) rendered by CLB concerned, rather did evidently become intentionally disobeyed. Therefore, he argues that through the making of the impugned operative part (supra), the learned Contempt Bench concerned, thus has remained within the frontiers of the jurisdiction conferred upon it, thereby there is no justification for any interference therewith being made, by this Court.



(iv) That the supra status quo order, thus was passed with regard to the fixed assets of the company. Therefore, in case the company wanted to sell any asset, the same could only be done with the approval of the Board of Directors. He further submits that even the appellant in his affidavit dated 31.10.2014, thus has admitted that two rolling mills, out of the four rolling mills, owned and operated by the company, have been purportedly destroyed. However, in the additional affidavit a contradictory plea has been taken that a 20” rolling mill was purportedly destroyed, and, that too was lying in disuse. The learned counsel further submits that the appellant has failed to place on record any resolution of the Board of Directors, thus granting permission for the destruction of the two rolling mills. Furthermore, he submits that though there are a few resolutions of the Board of Directors, before the sellings of small pieces of equipment, however, no permission was taken before selling two large and costly rolling mills.

(v) That though, the appellant has raised an objection on the maintainability of the contempt petition, as the same being initiated at the instance of the present respondent and not on the apposite reference becoming made to this Court, thus by the CLB concerned. However, no such objection became raised by the appellant in reply to the contempt petition. The learned counsel submits that since in a judgment rendered by the Apex Court titled as ***E.Bapanaiah versus Sri K.S. Raju etc. bearing Crl. Appeal No. 002357-002365/2014***, the Apex Court has held the CLB to be a Court subordinate to the High Court, as such, he submits that for want of makings of apposite reference, yet the instant contempt petition was maintainable, and, that thereby the supra



submission addressed by the learned senior counsel for the appellant relating to the instant contempt petition being misconstituted, thus for wants of makings of the apposite reference, but is required to be rejected.

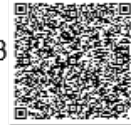
(vi) That even if the main case became dismissed, therebys too, the contemnors are required to be punished for the willful violation of the interim order, especially when the same was enforceable till the same becoming vacated through an order rendered on 1.3.2017. In support of his argument, the learned counsel has placed reliance on a judgment passed by the Apex Court in ***Prithawi Nath Ram versus State of Jharkhand and others***, reported in ***(2004) 7 Supreme Court Cases 261***. The relevant paragraph of the judgment (supra) becomes extracted hereinafter.

“In a given case, even if ultimately the interim order is vacated or relief in the main proceeding is not granted to a party, the other side cannot take that as a ground for dis-obedience of any interim order passed by the Court.”

Inferences of this Court

11. For the reasons to be assigned hereinafter, this Court is of the profound and insightful view, that since the instantly raised contempt petition, thus attributed the commission(s) of civil contempt at the instance of the present appellant. Resultantly, in terms of the supra extracted provisions, as embodied in Rule 9 of the Rules of 1974, the High Court, became empowered to draw action for contempt, in the following situations-

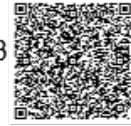
- (i) on its own motion,
- (ii) upon evident willful and intentional breaches



becoming made by the contemnor vis-a-vis the orders passed by the High Court, thereupon the aggrieved therefrom becoming also empowered to raise a contempt petition before the High Court, besides the aggrieved from the purportedly non complied with thus the relevant order, which also encompasses an order passed by the Court subordinate to this Court, becomes also empowered to raise a contempt petition before this Court.

(iii) Furthermore, in case any civil contempt is alleged to become committed vis-a-vis the order rendered by a Court subordinate to this Court, or vis-a-vis any civil proceedings raised before a Court subordinate to the High Court, thus on the making of apposite reference to this Court by a Court subordinate to this Court, thereupon also, the High Court becomes empowered to draw an able contempt action rather for the proven/evident breaches becoming made to the appositely made orders.

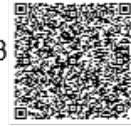
12. Since the instant contempt petition has been reared by the present respondent against the present appellant upon the latter purportedly making willful disobedience or intentional violation qua the supra interim order, thereby when the present respondent but obviously becomes a person aggrieved from the apposite purported violation. As such, when vis-a-vis the party aggrieved, there is a bestowment of a privilege to initiate action for contempt against the contemnor concerned. Since the present respondent is also aggrieved from the supra passed interim order. Therefore, in the said situation, thus in



terms of the supra rules, there was no requirement for any reference becoming made by the CLB concerned, thus a Court subordinate to this Court, rather to this Court, nor in the absence of making such a reference, thus the assumption of jurisdiction on the instant contempt petition becomes vitiated, nor thereby the impugned order acquires any vice.

13. Even otherwise, fortification to the said becomes acquired from the judgment rendered by the Apex Court in *E.Bapanaiah's* case (supra), relevant paragraphs whereof become extracted hereinafter, wherein, it has been clearly expostulated, that the Company Law Board is a Court subordinate to this Court, besides when therein also becomes expostulated the fine principle, that even without a reference being made to the High Court by the Company Law Board, in respect of any purported willful violation or willful disobedience being made by the errant litigant vis-a-vis the appositely passed orders, yet an able contempt petition can be reared by the party aggrieved from the such purported contumacious conduct. Resultantly, the supra argument raised before this Court, by the learned senior counsel for the appellant, that a peremptory necessity became enjoined upon the Company Law Board, which is the Court subordinate to the High Court, to make a reference to this Court for thereby making the instant contempt petition to be a well constituted petition, besides to thereby make the order rendered thereon to be a jurisdictionally valid order, but is a submission which requires rejection, and, is so rejected.

14. Be that as it may, thus on the merits of the instant lis, but for the reasons to the assigned hereinafter, no actionable contumacy did



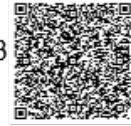
become committed at the instance of the present appellant.

15. The order in respect whereof an alleged contumacy becomes attributed by the present respondent to the present appellant, is re-extracted hereinafter.

- “(1) The company/respondent shall maintain status quo as of date of the fixed assets, the composition of the board and any holding in the company.*
- (2) In case of sale of any asset, the same should not be done without being in the agenda and approved by the board.*
- (3) A fortnightly statement of receipts and payments is to be furnished to the petitioners effective from 1st May, 2007.*
- (4) For all board meetings, 15 days notice should be given to the petitioners.”*

16. A reading of the supra order unfolds, that the contesting litigants were required to be maintaining status quo in respect of the fixed assets of the company, vis-a-vis the composition of the board, and, the holding(s) in the company. Moreover, there was also a bar against the makings of sales of any apposite asset, but the said bar becoming relaxed, thus on an apposite approval becoming granted by the Board. Apparently, the respondent was the minor share holder in the company concerned, whereas, the present appellant was the majority share holder in the said company. The relevant contempt which is alleged to be committed by the present petitioner, relates to the movings of the 12” rolling mill (installed in 1970s), to the company scrapyard, after it became defunct in 2012, and, qua the utilization of the parts of the supra machinery, thus for upgrading other operational units but to improve efficiency.

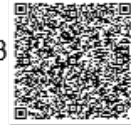
17. Ex facie, the supra allegedly committed contumacy, but does not constitute any apposite alienation, nor ex facie was any sale of



the assets of the company, nor constituted any attempt on the part of the appellant, thus to defeat the share holding rights of the respondent in the company concerned, who otherwise evidently holds a minority share holding in the company concerned, nor also the said is in opposition to mercantile necessity(ies) so as to further enrich the company. Contrarily, prima facie, the supra alleged contumacy, as attributed to the present appellant appears to become generated by mercantile necessity, so as to further enrich the company, so that therebys, even to the present respondent, there are enhanced accrual of profits.

18. As stated supra, the dispute which became raised between the parties, related to mismanagement, and, oppression of the affairs of the company. Moreover, as stated supra, the valuations, as were directed to be made, were so directed only in respect of the valuations of the enlisted shares of the company, thus with the stock exchange concerned. Therefore, the said directed to be made valuations, did not cover, the valuations of the assets of the company, nor encompassed the valuations being made of the plant and machinery of the company, nor also covered the aspect qua when on account of prima facie redundancy of but obsolete plant and machinery, thus an eminent requirement became generated, qua the same being relegated to the scrapyard, but for facilitating the replacings thereof being made by installation of state-of-art plant and machinery, so that, therebys optimum, and, better apposite production takes place, whereby there is an enhancement in the profiteerings of the company, benefits whereof would also accrue to the present respondent.

19. Now it has to be discerned whether there is any cogent



evidence adduced on record by the respondent wherefrom an inference may become sparked to the extent that the above purported contumacy, as became allegedly committed by the present appellant, did lead to-

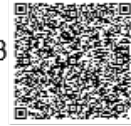
(a) Through active practices of malafides by the present appellant, thus loss accruing to the present respondent from the earlier thereto profits becoming earned by the company.

(b) That the machinery (supra) despite not becoming depreciated, nor becoming non-operational yet it becoming relegated to the scrapyard, so that subsequently it becomes retrieved therefrom, and, becomes surreptitiously monetized, so that thereby loss becomes encumbered to the present company, and, also concomitantly to the present respondent.

(c) That the structures housing the machinery, thus evidently rather not becoming unsafe owing to rusting. There being also evidence suggestive to the effect, that the above became not necessitated to protect the worker safety manner, through removal of the supra hazardous defective machinery from the factory floor, thus to the factory scrapyard.

(d) That there existing evidence despite no operational requirements rather emerging, for upgrading other units for continuous viability of manufacturing process, yet the supra alleged contumacy becoming indulged into by the present appellant, whereby the declaration qua the plant to becoming deteriorated, and, whereafter its being relegated to the scrapyard, but being a purely invented and fictitious ground.

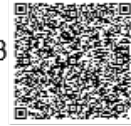
20. Conspicuously, also the supra necessities are argued by the



learned counsel for the respondent to rather not evidently emerge, besides it is also argued, that the relevant contumacious act is ridden by the vice of malafides, whereupon it is contended that thereby the supra purported contumacious act, did become committed by the appellant.

21. However, since this Court in the supra paragraph has made therein a conclusion, that the present respondent was required to adduce cogent evidence suggestive, that the supra premises/parameters, thus not working as tenable expiatory reared pleas, rather becoming ingrained with malafides, and/or being a sheer invention or a flimsy pretext, for somehow or the other, thus causing loss to the business interest of the present respondent. Moreover when, the present respondent was also required to adduce cogent evidence, that on account of apposite ill management and oppressive conduct of the present appellant, who held the majority share holdings, has thereby abused his majority share holdings, which has concomitantly resulted in his but mismanaging and oppressing the management, and, affairs of the company concerned, thus causing loss to the present respondent.

22. However, no evidence to support the supra argument, as may become comprised in the balance sheet of the company, rather became adduced, whereas, therefrom alone it could emanate, that the business undertaken by the company, after the above purported contumacious act, becoming committed by the present appellant, did result in the company business becoming impoverished, nor when any evidence becomes adduced, that the removal of the 12” rolling mill to the company scrapyards after it became defunct, and, qua the parts of the machinery becoming utilized, thus for upgrading other operational units



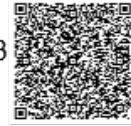
to improve efficiency, but were sheer inventions.

23. Though, therefrom the supra conclusions do work in favour of the present appellant.

24. However, it is yet painful to note that despite the supra evidence remaining unadduced, yet an ill drawn impugned order became drawn against the present appellant. Since for the wants of adduction of supra evidence, this Court becomes thus led to make a conclusion, that the supra purported contumacious act rather than being construed to be a well proven contumacy rather becoming indulged into by the present appellant, but was heading towards improving the efficiency, besides became maneuvered to make the business of the company to be more flourishing.

25. Resultantly therebys, and, furthermore since the supra is a possible interpretation edging towards the present appellant. Therefore, in terms of the decision rendered by the Apex Court in **Ram Kishan's** case (supra), relevant paragraphs whereof become extracted above, wherein, it has been declared that if vis-a-vis any order, thus two possible interpretations, thus can possibly be made, thereupon no actionable contempt is drawable against the alleged violator. As such, when the above is a possible interpretation vis-a-vis the order alleged to be purportedly disobeyed, therebys also no contempt action was drawable against the present appellant.

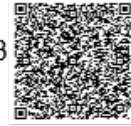
26. The said purported loss of business interest, vis-a-vis the present respondent, but would have surgeforth only on the balance sheets of the company becoming placed on record, relating to the profits earned by it, prior to the supra acts being done, and, the profits earned



by it subsequently to the supra act. The said balance sheet was the best evidence to draw a conclusion, that there was thus a detriment to the financial interest of the present respondent, in the mercantile activities in the said company. However, the said remain unadduced, thereby, when even otherwise for the hereinabove reasons, this Court has concluded, that through the purported contumacious act, there was thus maneuverings on the part of the present appellant to improve the efficiency, and, output of the company. Resultantly, the wants of adduction by the present respondent, of the supra best evidence for cogently proving the relevant fact, but gives an added momentum to the supra conclusion.

27. Be that as it may, the respondent has also filed CA No. 75 of 2014 before the CLB, which became decided by the NCLT along with the contempt petition (supra). The relevant paragraph of the said order becomes extracted hereinafter.

“26. The petitioners have alleged that despite status quo orders on Fixed Assets, the respondents have destroyed certain Fixed Assets during the pendency of the petition. It is stated that CLB vide its order dated 6.2.2013, permitted the Respondents to avail a term loan of Rs.55 crores for relocating. However, the respondents neither availed the term loan for Rs.55 crores nor relocated the unit. But they started dismantling the machinery which was stated to be in good condition and selling the same by stating that it was not required. The decisions to sell the machinery was taken in various Board of Directors meetings despite the status quo order of CLB dated 8.5.2007. The petitioners have stated that in Dec 2013, they noticed that the respondents had started dismantling the shed covering the 12 inch rolling mill and the said mill was not seen in the factory premises. It is stated that the 12-inch mill was a running mill as per the production



figures given in CA 75/2014. They were also Informed that the motor of the 20-inch mill had been removed by the respondents thereby destroying that mill as well. Petitioners have stated that they have filed a contempt petition in this regard before the Hon'ble High Court.”

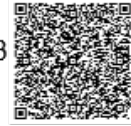
28. A reading of the supra extracted para reveals, that there were allegations that the appellant herein had purportedly violated the supra interim order. Moreover, in the relevant paragraph, para whereof becomes extracted hereinafter, the NCLT has observed, that since the subsequent events relate to business decisions, therefore it declined to interfere.

“x x x x

As for the instances listed in the main petition, the petitioners have claimed that these actions were chiefly business and management decisions and do not come under the purview of Sections 397 and 398. The subsequent event filed by CA 75/2014 are being considered as they are also connected with the instances of oppression and mismanagement referred in the main company petition. These have been listed on pre pages 45 to 46 and have been discussed thereafter in detail. The same is not being repeated for brevity. We find that these subsequent events also relate to business decisions and hence we decline to interfere”

29. The order (supra) passed by the NCLT became challenged before the NCLAT. The decision on the said appeal was made on 14.11.2017. The relevant paragraphs of the order (suprar) become extracted hereinabove.

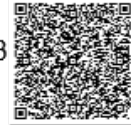
30. Though in the order passed in the main appeal, there is a declaration that there was no active oppression or mismanagement, at the instance of the appellant, qua the business affairs of the company, besides when thereins an averment became raised, thus alike the one, as becomes raised in the present contempt petition. However, when the said averment did not become countenanced, rather when the supra



interim order became vacated. Though therebys, the instant contumacy, as attributed to the instant appellant becomes subsumed within the supra made order of the NCLT. However, the learned counsel for the respondent submits, that when in the judgment rendered by the Apex Court in ***Prithawi Nath Ram's*** case (supra), a view has been taken, that once an evident contempt or violation is made qua an interim order, therebys the action for contempt is drawable, irrespective of the fact that the said interim order becomes vacated.

31. For the reasons to be assigned hereinafter, the verdict (supra) rendered by the Apex Court, is confined to the facts detailed therein. Since, therebys there is inter se contra distinctivity inter se the facts therein, and, the facts at hand, therebys the *ratio decidendi* (supra), as propounded therein is not applicable to the instant case. In the facts detailed in the verdict (supra), the Apex Court, was dealing with a situation, wherebys the learned Single Judge of the High Court concerned, while dealing with an application for initiation of contempt proceedings against the contemnor concerned, rather had declined to initiate contempt action against the contemnor concerned. The reason which became so formed by the learned Single Judge concerned, emanated from the factum, that the jurisdiction to initiate proceedings for contempt against the contemnor concerned, but was not confined to a question of any willful disobedience to any judicial order, but also extended to analyzing the correctness of the order, which became purportedly disobeyed.

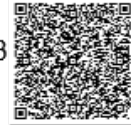
32. The said undertaken exercise by the learned Single Judge concerned, became not accepted by the Apex Court in the verdict



(supra). It rather became expounded in the verdict (supra) that once an order acquires binding and conclusive effect, and/or, that there is no ambiguity or incorrectness in the order, therebys when the same but requires compliance being made theretos, thus there is no requirement for going behind the said order. Resultantly therebys, the factual matrix therein is distinct to the factual matrix in the instant case, therebys the decision (supra) is inapplicable to the present case.

33. Even otherwise, paragraph 9 in the verdict (supra) prima facie appears to be in the nature of observations, and, it did not obviously cover the factual situation, embodied in the verdict (supra), therebys, but the *obiter dicta* embodied in paragraph 9 of the verdict (supra), whereons the supra argument is erected by the learned counsel for the respondent, but when does not encapsulate a binding *ratio decidendi*, nor the *obiter dicta* (supra) is required is to be applied to the instant case.

34. Furthermore, the preponderant reason, for this Court concluding that the above submission addressed before this Court by the learned counsel for the respondent, as appertains to the maintainability of the present appeal, is required to be rejected, whereas, in this Court declaring that the instant appeal rather is maintainable, thus becomes hinged upon the hereinafter principles, relating to the maintainability of appeals by the Appellate Court concerned, principles whereof, become engrafted in paragraph No.11 of the verdict made by Hon'ble Apex Court, in case titled as "**Midnapore Peoples' Coop. Bank Ltd. And others V. Chunilal Nanda and others**" reported in **(2006) 5 SCC 399**,



paragraph whereof becomes extracted hereinafter.

“11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus :

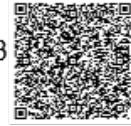
I. An appeal under section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of 'jurisdiction to punish for contempt' and therefore, not appealable under section 19 of CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the

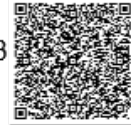


Constitution of India (in other cases).

The first point is answered accordingly.”

35. Exceptions to the arguments raised (supra) by the learned counsel for the appellant against the maintainability of the present appeal, thus become well grooved in principle No. IV, wherein, it is expounded that any direction or decision which is incidental to or is inextricably connected with the order punishing for contempt, thereby, the said does make the contempt appeal maintainable. Conspicuously also when for all the reasons (supra), the learned Contempt Bench concerned, through the making of the impugned order, has evidently proclived towards punishing the contemnors for contempt, whereby also the instant appeal is maintainable.

36. Furthermore, when the judgment (supra) in ***Prithawi Nath Ram***'s case (supra) became rendered by a Bench strength of two Hon'ble Judges of the Apex Court, whereas, the subsequent thereto judgment rendered by the Apex Court in **Midnapore Peoples' Coop. Bank Ltd.**'s case (supra), thus became also rendered by a quorum of two Hon'ble Judges of the Apex Court. However, when supra paragraph 9, as borne in ***Prithawi Nath Ram***'s case (supra), is but *obiter dicta*, whereas, the Apex Court in **Midnapore Peoples' Coop. Bank Ltd.**'s case (supra) has conclusively summarized the principles relating to the exercisings of contempt jurisdiction, principles whereof become extracted hereinabove. Therefore, the latter judgment when has omnibusly settled the *ratio decidendi* in respect of the exercisings of contempt jurisdiction, thereby the said principles, as settled therein become the *ratio decidendi*, than the *obiter dicta* (supra), as embodied

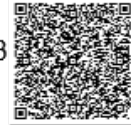


in paragraph 9 in ***Prithawi Nath Ram's*** case (supra).

37. Resultantly, and, moreover also, when through the making of the impugned order, the learned Contempt Court of this Court has prohibited the appellant from either asking for extensions of time, if required, besides also has untenably restrained them, thus from purveying justifiable reasons for the order (supra) made by this Court, may be not requiring preemptory compliance, rather may be for the reason that the directions made therein were not well banked upon the reasons referred to therein. Importantly also when an appeal had been filed against the decision (supra) recorded by the NCLT, whereupon, it was required for the learned Contempt Bench to rather than at the very threshold make the impugned order, thus await the outcome of the appeal (supra).

38. Moreover when in a judgment rendered by the Apex Court in case titled as ***Modern Food Industries (India) Ltd and another versus Sachidanand Dass and another*** reported in ***1995 Supp (4) Supreme Court Cases 465***, it has been expounded, that since investment of contempt jurisdiction of the High Court is to ensure the majesty of the orders passed by the High Court or to ensure the majesty of the orders passed by the Court subordinate to it, and, that when the appeal became reared against the appositely passed orders, thereupon, before the initiation of contempt, the learned Contempt Bench is required to be awaiting the outcome of the decision on the relevant appeal. The relevant paragraphs of the judgments (supra) become extracted hereinafter.

“2. *The learned single Judge of the High Court by his*

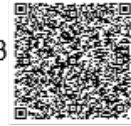


order dated 10.1.1992 quashed the order of termination of the services of the first respondent, by the appellants and directed his reinstatement and payment of back-salary. Appellants preferred an appeal to the Division Bench and also sought a stay, pending appeal, of the operation of the learned single Judge's order. The Division Bench did not take up the appeal for admission nor considered the prayer for interlocutory stay. In the meanwhile, on the allegation that the learned single Judge's order had not been obeyed, the first respondent moved for initiation of proceedings for contempt against the appellants pursuant to which the High Court directed the Chairman of the first appellant to appear in person so that the complaint of contempt be proceeded with.

3. Before the High Court, appellants urged that before any contempt proceedings could be initiated, it was necessary and appropriate for the Division Bench to examine the prayer for stay, or else, the appeal itself might become infructuous. This did not commend itself to the High Court which sought to proceed with the contempt first. We are afraid, the course adopted by the High Court does not commend itself as proper. If, without considering the prayer for stay, obedience to the Single Judge's order was insisted upon at the pain of committal for contempt, the appellants may find, as has now happened, the very purpose of appeal and the prayer for interlocutory stay infructuous. It is true that a mere filing of an appeal and an application for stay do not by themselves absolve the appellants from obeying the order under appeal and that any compliance with the learned single Judge's order would be subject to the final result of the appeal. But then the changes brought about in the interregnum in obedience of the order under appeal might themselves be a cause and source of prejudice. Wherever the order whose disobedience is complained about is appealed against and stay of its operation is pending before the Court, it will be appropriate to take up for consideration the prayer for stay either earlier or at least simultaneously with the complaint for contempt. To keep the prayer for stay stand-by and to insist upon proceeding with the complaint for contempt might in many conceivable cases, as here, cause serious prejudice, this is the view taken in **State of J. and K. v. Mohammad Yaqoob Khan, (1992) 4 SCC 167.**

39. In the wake of the said trite expostulation of law, made in

the judgment (supra), and, which thus is a *ratio decidendi* covering the



instant facts which but synchronize with the said made expostulation of law, thereby this Court is of the view that rather than the Contempt Bench concerned, proceeding to initiate contempt action against the contemnor concerned, it was required to be awaiting the outcome of the appeal filed before the NCLAT, as became reared by the present appellant against the order rendered by the NCLT on 1.3.2017, on the company petition.

Final order

40. Hence, there is merit in the instant appeal and the same is allowed, and the impugned order dated 30.10.2018, as becomes drawn by learned Single Bench is quashed, and, set aside, and, the present appellant is discharged accordingly.

41. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

January 28th, 2025
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No