

In the High Court of Judicature at Madras

Dated: 22.11.2016

Coram

The Honourable **Mr.JUSTICE RAJIV SHAKDHER**

Contempt Petition No.2458 of 2016

1 M/S.VISWAPRIYA (INDIA) LTD.
(FORMERLY VISWAPRIYA FINANCIAL SERVICES &
SECURITIES LTD) REP. BY ITS DIRECTOR
2 R.SUBRAMANIAN
..... PETITIONERS

Vs

1 DR.PRATEEP V.PHILIP. IPS
THE ADDL. DIRECTOR GENERAL OF POLICE EOW
II HQ CHENNAI LST FLOOR SIDCO OLD
CORPORATE OFFICE BUILDING INDUSTRIAL ESTATE
GUINDY CH-600 032.
2 MR.ASHOK KUMAR DAS IPS.
THE INSPECTOR GENERAL OF POLICE EOW II HQ
CHENNAI LST FLOOR SIDCO OLD CORPORATE
OFFICE BUILDING INDUSTRIAL ESTATE GUINDY
CH-600 032.
3 TMT.P.K.SENTHIL KUMAR IPS
THE SUPERINTENDENT OF POLICE EOW II HQ
CHENNAI LST FLOOR SIDCO OLD CORPORATE
OFFICE BUILDING INDUSTRIAL ESTATE GUINDY
CH-600 032.
4 N.LAVAKUMAR
THE INSPECTOR OF POLICE EOW II HQ CHENNAI
LST FLOOR SIDCO OLD CORPORATE OFFICE
BUILDING INDUSTRIAL ESTATE GUINDY CH-600 032.
..... RESPONDENTS

PETITION filed under Section 11 of the Contempt of Courts Act to punish the respondents herein for the contumacious disobedience of the order dated 04.12.2013 passed in C.A.NO.1009/2013.

For Petitioners

: Mr.R.Subramanian
party-in-person

ORDER

1. This is a petition filed by a company, by the name Viswapriya (India) Ltd. (in short VIL) and one Mr.R.Subramanian, the Director of VIL.

1.1. By virtue of this petition, contempt proceedings are sought to be taken out against respondents 1 to 4 for the alleged violation of order dated 04.12.2013 passed in Comp.A.No.1009 of 2013.

1.2. Respondent Nos.1 to 4 are police personnel of varying ranks and, therefore, will be collectively referred to as "police authorities".

2. The short ground, on which the Contempt Petition has been preferred, is, that despite a direction issued by this Court vide the aforementioned order, which stayed prosecution until further orders, the police authorities have been acting to the contrary. In other words, petitioners are aggrieved by the fact that they are being prosecuted despite a stay order being in place.

2.1. Thus, the case set up by the petitioners herein, is that, the police authorities were, in effect, to stay

their hands with respect to the First Information Report (FIR), which is numbered as: Crime No.5 of 2013.

3. In order to appreciate the contours of this Contempt Petition, the following brief facts need to be noticed.

3.1. VIL, as per its own averment made in the petition, had issued debentures under two (2) Schemes, i.e, Prime Investment Scheme and Asset Backed Securities, to two (2) allottees. The said debentures, evidently, were held by four thousand (4000) debenture holders, comprising of two thousand (2000) or more families.

3.2. Concededly, VIL ran into financial trouble and was unable to repay the principal and interest accruing on the debentures. In order to get over this difficulty, one of the shareholders of VIL, i.e., Analog Financial Services Private Ltd (in short Analog), approached this Court via an application being: Comp.A.No.1007 of 2013, to seek permission to reschedule the monies payable to the debenture holders.

3.3. The reschedulement of the payments was encapsulated in a Scheme. The said Scheme was sanctioned by this Court vide order dated 23.04.2014, passed in

C.P.No.15 of 2014. The order though, came to be issued on 30.4.2014. The Scheme, inter alia, envisaged infusion of funds by Analog and repayment of monies to debenture holder within the time frame set out therein. The Clauses pertaining to infusion of funds by Analog and repayment, as provided for in the sanctioned Scheme, are extracted herein below for the sake of convenience:

"Clause(i) The scheme has been propounded by the applicant and in view of the strong solvency of the company it is estimated that no infusion of funds is required by the company but however the applicant has already committed to infusion of Rs.15 Crores into the company in 3 equal instalments by 31 st March 2014, 30 th Sept 2014 and 31 st March 2015."

"Clause 2(A) (a) All interest whatsoever that is payable on the Secured Debentures from 1.04.2013 shall be paid within 9 months from the date on which due and the said amounts shall be paid with interest for the delayed period of 9 months at the contracted rate the Debenture holder is entitled to in respect of the principal amount represented by the Debenture."

(Emphasis is mine)

3.4. Decidedly, Analog, failed to comply with its obligations. This aspect of the matter came up before me, at a hearing held on 16.06.2016 in Company Application

C.P.No.15 of 2014. Consequent thereto, a direction was issued by me, for appointment of an Administrator, to look into the affairs of VIL, so that the, interests of the debenture holders, who are vast in number, could be secured and fortified. A senior advocate of this Court, Mr.P.H.Arvinth Pandian, was thus, appointed as an Administrator.

3.5. It appears that, on account of the failure on the part of VIL to service its debt, some debenture holders lodged criminal complaints against VIL and its Directors. These complaints got morphed into criminal cases, which, inter alia, attracted the provisions of Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (in short 1997 Act).

3.6. Consequently, an FIR was registered, which got numbered as: Cr.No.5 of 2013, by the Economic Offences Wing II of the Chennai City Police. Admittedly, in connection thereto, petitioner No.2 was arrested.

3.7. It appears that, in order to facilitate the repayment of dues of the debenture holders, this Court, from time to time, passed interim orders dated 21.10.2013, 22.10.2013 and 23.10.2013, in the two (2) applications,

moved by Analog; these being: Comp.A.Nos.1009 and 1010 of 2013.

3.8. Evidently, via these interim orders, in particular, vide order dated 23.10.2013, protection was given to petitioner No.2. As a matter of fact, petitioner No.2, who had been arrested was directed to be released from custody.

3.9. Pertinently, the aforementioned orders, were followed by an order dated 04.12.2013, passed in Comp.A.Nos.1007 and 1009 of 2013, based on which, the instant Contempt Petition has been moved by the petitioners.

4. By virtue of this order, it was directed that, till further orders, prosecution would not take any action qua the petitioners.

5. A close perusal of these orders would show that this Court had in mind the interests of the debenture holders, and since, Analog was professing to finance the Scheme of repayment, this Court did not want any disruption in the implementation of the Scheme and, hence, proceeded to pass protective orders in favour of petitioner No.2.

6. As noticed herein above by me, the sanctioned Scheme has collapsed, largely because of Analog failing to

bring in the agreed funds. The petitioners before me, only compounded the misery of the debenture holders; they have done next to nothing to repay their dues. I may also point out that, as a matter of fact, petitioner No.2 had applied to this Court for grant of anticipatory bail, which was subject matter of Crl.O.P.No.21449 of 2015.

6.1. This Court vide order dated 18.09.2015, dismissed the said petition. While dismissing the petition, the Court made some critical observations with regard to the conduct of petitioner No.2.

6.2. Notably, both the order dated 18.09.2015 and the order dated 04.12.2013 was passed by the same Judge, i.e., Hon'ble Mr.Justice V.Ramasubramanian (as he then was). Evidently, the order dated 18.09.2015 came to be passed by the learned Judge, when it got revealed that, petitioner No.2 had no intention to repay the debenture holders of VIL, and that, he was involved in activities, which had criminal connotations.

6.3. For the sake of convenience, some of the observations made in the order dated 18.09.2015, which throw light on the conduct of petitioner No.2, are extracted hereunder:

3. The petitioner, who is the Managing Director of a company formerly known as M/s.Viswapriya Financial Services and Securities Limited and which is at present known as Viswapriya (India) Limited, is arrayed as the fourth accused in Crime No.05 of 2013 on the file of Economic Offences Wing II of the Chennai City Police for the alleged offences under Sections 406, 420 and 120B of the Indian Penal Code read with Section 5 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997. The aforesaid complaint was registered at the instance of one Mr.G. Ramadoss, who claimed that upon being incited by the fifth accused namely P.Ram Mohan, who was employed as the Chief Manager of M/s.Viswapriya Financial Services and Securities Limited and at the behest of one Mr.Ganesan, working as Senior Executive in the company, he and his family members had invested a total amount of Rs.6,60,000/- in a scheme known as 'Prime Investment Scheme'. The defacto complainant was issued with secured non convertible debentures, which actually matured for payment. According to the defacto complainant, he and his family members were issued with four cheques along with covering letters indicating as though the defacto complainant requested the transfer of investments to a company by name M/s.Quadrangle Trading Services Limited in a scheme known as 'Liquid Plus Scheme'. According to the defacto complainant, he never made any request for the transfer of investments and when he presented

the cheques for payment, they returned dishonoured.

4. Though the complaint was lodged way back on 21.10.2013, the hands of the police got tied up due to certain collateral proceedings, without reference to which, the plea for anticipatory bail cannot be understood. Hence, I am constrained to make a reference to some collateral proceedings.

5. The petitioner herein admittedly promoted about 49 companies, whose particulars are as follows :.....

6. Though the petitioner was/is a director only in a few of them, the employees of some of these companies happen to be the directors of the other companies. In other words, the petitioner has direct or indirect control over the above 49 companies.

7. When M/s.Viswapriya (India) Limited, which is the first accused in Cr.No.5 of 2013 (in relation to which, the fourth accused has come up with this anticipatory bail petition), plunged into a financial crisis, one of the companies promoted by the petitioner herein by name M/s.Analog Financial Services Private Limited came up with an application in Comp.A.No.1007 of 2013 on the file of the Company Court seeking a direction to convene, hold and conduct a meeting of the secured debenture holders of M/s.Viswapriya (India) Limited for the purpose of considering a scheme of arrangement under Sections 391 to 394 of the Companies Act, 1956. The said application along with the proposed scheme of arrangement was

filed before the Company Court in September 2013, at least a month before the criminal complaint was lodged on 21.10.2013. In the said application, this Court directed publication of notices and ordered convening of the meetings of the secured debenture holders on 24.11.2013. A senior member of the Bar was also appointed as the Chairman of the meeting, since this Court could not repose confidence in the petitioner or his nominees who were the directors.

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9. It should be recorded at this stage that since the application for convening a meeting of the debenture holders for considering a scheme of arrangement was filed on 19.9.2013 and also since the police registered the first information report on 21.10.2013, the Company Court, even while ordering the convening of the meeting, granted protective orders preventing the police from arresting the petitioner herein, with the object of seeing as to whether the debenture holders were with the petitioner herein or not. Eventually, the report of the Chairman of the meeting of the debenture holders indicated that more than 93% of the debenture holders supported the scheme of arrangement. Hence, the person who came up with the scheme of arrangement, filed a company petition in C.P.No.15 of 2014 for sanctioning the scheme of arrangement. In the said petition, notice was ordered to the Regional Director of the Ministry of Corporate Affairs. In response to the notice, the Regional

Director filed a report. A group of debenture holders also filed objections. After considering those objections, the Company Court passed an order dated 30.4.2014 in C.P.No.15 of 2014 sanctioning the scheme of arrangement.

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11. Thereafter, the first accused herein filed a writ petition in W.P.No. 14229 of 2015 under Article 226 of The Constitution for a declaration that the first information report in Cr.No.5 of 2013 was without jurisdiction, non est and void. The affidavit in support of the said writ petition was sworn to by the petitioner herein (fourth accused in the first information report) on behalf of the first accused. In the said writ petition, notice was ordered and a stay of all further proceedings in Cr.No.5 of 2013 was granted. However, the said writ petition was eventually dismissed by a final order dated 6.8.2015. It is relevant to note that by the said order dated 6.8.2015, a learned Judge of this Court not only dismissed the writ petition filed by the first accused, but also dismissed yet another writ petition in W.P.No.14664 of 2015 filed by a completely different company. That company came up with an appeal in W.A. No.1227 of 2015 against the order of the learned Judge dated 6.8.2015 in W.P.No.14664 of 2015 alone. A Division Bench (presided over by me) dismissed the said writ appeal by judgment dated 28.8.2015.

12. The above sequence of events indicates that from 21.10.2013 - the date on which a first information report was registered against the

petitioner and others, the petitioner was in enjoyment of one protective order or the other, either in the form of stay of all further proceedings in the criminal complaint or in the form of protection from arrest. Both types of protective orders eventually disappeared on 6.8.2015, paving the way for the police to step up investigation.

13. At this stage, it is relevant to note that one more criminal complaint was filed at Trichy in Cr.No.1 of 2015. The petitioner and another person were taken into custody by the Trichy Police and when they were produced before the concerned Court, they were directed to be enlarged on bail, in view of the protective orders granted by the Company Court. After getting enlarged, the petitioner approached the Madurai Bench of this Court with a quash petition and got further proceedings stayed. Though I am not now concerned with the said petition, I am making a reference to it for the completion of narration of facts.

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17. Since the petitioner is the kingpin and since he has taken the full responsibility and also since he is at large, I passed an order on 8.9.2015 calling for the following details :

.....

18. The object of passing the above order was to see if the depositors could get some money and to see if the petitioner really has the ability and resources to make repayment to the debenture holders. Though the police have been able to secure and arrest all and sundry,

connected with the affairs of the first accused company, the police have not been able to find out the whereabouts of the petitioner herein for the past nearly six weeks, after the dismissal of the writ petition. Therefore, I thought that the mere dismissal of the anticipatory bail application will not advance the cause of the debenture holders and hence, I toyed with the idea of exploring the possibilities of bringing out the resources, if there are any, with which, the petitioner would be able to repay the debenture holders, even while keeping the anticipatory bail application pending. This is why I passed the order dated 8.9.2015, which is extracted in the preceding paragraph, calling upon the petitioner to furnish various details.

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24. The stand taken by the depositors association cannot also be termed as wholly unjustified, in view of the fact that the petitioner herein and the first accused company have not so far honoured the commitments made by them to the Company Court in C.P.No.15 of 2014, except to the extent of about Rs.50.00 Lakhs. In other words, the Scheme sanctioned by this Court in C.P.No.15 of 2014 is also not working out as per the time schedule.

25. Therefore, accepting the contentions of the prosecution and the intervenors, this petition is dismissed. "

(Emphasis is mine)

7. As would be apparent, upon perusal of the extracts of order dated 18.09.2015, that the learned Judge was disturbed by the conduct of petitioner No.2, whereby, he obtained bail and evaded arrest, because of the protection granted by the Company Court, in C.P.No.15 of 2014.

8. The question that arises before me, is that, given the conduct of the petitioners, should this Court should proceed with the Contempt Petition qua police authorities, who are trying to discharge their statutory duty in the interests of the debenture holders.

8.1. To my mind, the answer to the question has to be in the negative. The coercive powers vested in a Court of Record under the Contempt of Courts Act, 1971 and under Article 215 of the Constitution of India are to be exercised to further the cause of justice. In a case like this, if the Court were to proceed against the police authorities for the alleged violation of order dated 04.12.2013, it would result in travesty of justice. It would be a case of the tail wagging the dog. It is entirely within the ambit of the Courts' power to decline initiation of contempt proceedings even when there is an alleged infraction of a Court order where good and robust reasons obtain for employing restraint. In my opinion,

this is one such case. Even otherwise, I have doubts as to whether in exercise of power under Section 391(6) of the Companies Act, 1956, a Court could stay the criminal proceedings. (See the judgment of a Single Judge of the Bombay High Court in the case of **Uma Investments Pvt. Ltd., V. Unknown**, (1976) 47 Company Cases 242 (Bom.)).

8.2. I must also indicate that there appears to be contrary view articulated by a single Judge of the Gujarat High Court in **Harish C.Raskapoor and Others V. Jaferbhai Mohmedbhai Chhatpar**, (1989) 65 Company Cases 163 (Guj.) The discussion in Harish C.Raskapoor's case veered around whether the word "proceedings" would include criminal proceedings. The Gujarat High Court seems to have taken the view that the criminal proceedings do come within the sway of Section 391(6) of the 1956 Act, though on facts, in Harish C.Raskapoor's case stay was not granted.

8.3. In my opinion, a close scrutiny of the provision under Section 391(6) of the 1956 Act would show that it gives power to the Court to stay suits and/or proceedings against the "**company**" and not its Directors or Officers.

8.4. Furthermore, in another judgment of the Bombay

High Court in case titled Chitta Ranjan Guha and another V.

<https://hcservices.ecourts.gov.in/hcservices/>

M.Ameen, while there was no discussion as to whether or not

criminal proceedings were covered under Section 153 of the Companies Act, 1913 (which is pari materia to Section 391 (6) of the 1956 Act), the issue which did come up for consideration was whether or not complainant who had initiated the criminal complaint was a creditor in the eyes of law. Pertinently, in Chitta Ranjan Guha's case, the Court allowed the criminal proceedings to go on to ascertain as to whether the person, who had initiated the criminal complaint could be termed as the Creditor of the accused company.

8.5. The question, which, thus, arises for consideration, apart from anything else, is that, whether a Court could stay investigation and trial of criminal offence committed by the company and/or its officers, which are in no way connected with the provisions of the 1956 Act. As noticed above, there is an allegation of violation of the 1997 Act by the petitioner. I am, presently, inclined to hold that the view held by the Bombay High Court in *Uma Investments Pvt. Ltd's* case is the correct view.

8.4. This apart, these are issues, which will come up, more fully, for consideration, at the point in time, when the Court is required to examine the scope and the need to continue with the operability of the order dated

04.12.2013. As indicated above, an Administrator has already been appointed to look into the affairs of the company. The report of the Administrator is awaited, which is relevant for proceedings taken out under the 1956 Act.

9. In so far as this petition is concerned, it is confined to seeking initiation of contempt proceedings against the police authorities. Having regard to the totality of facts and circumstances obtaining in the case, I am not inclined to initiate contempt proceedings against the police authorities in this case.

10. The Contempt petition is, accordingly, dismissed.

SD/
JOINT REGISTRAR(OS)

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Dated at Madras this the day of 2016.

सतयमेव जयते COURT OFFICER(O.S.)
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