

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO.1 OF 2022
IN
COMPANY PETITION NO.1294 OF 2015**

Subhash Chandra Tiwari and Anr.

... Petitioners

Versus

Hemant J. Mehta

... Respondent

Mr. Subhash Tiwari, Petitioner No.1 present in person.

Mr. Nishit Dhruva with Ms. Niyati Merchant, Mr. Harsh Sheth i/by MDP and Partners, for Respondent.

CORAM: N.J.JAMADAR, J.

DATE: 24th AUGUST, 2022

P.C.:

1. This Petition is preferred to initiate an action for contempt of court against Mr. Hemant J. Mehta, Insolvency Resolution Professional, for disobedience of the order dated 14th June, 2021 passed by this Court in Company Petition No.1294 of 2015.

2. The substance of the Petition is that the Petitioner had filed a Company Petition No.1294 of 2015 under Section 433 (c) and 434 of the Companies Act, 1956 (the Act of 1956) for winding up of the Lok Housing and Constructions Limited, a public limited company incorporated under the Act of 1956. On 7th August, 2017 when the said Petition was listed before the Court, a joint submission was made that on 2nd August, 2017 consent terms were executed between the Petitioner and the

Respondent Company, whereby and whereunder the Respondent company acknowledged its liability to pay the outstanding amount of Rs.1,50,00,000/- to the Petitioner in accordance with the schedule of payment agreed upon, by and between the parties.

3. The consent terms (marked 'X') were taken on record by the Court and the following order was passed :

“1.Consent terms signed by the parties and their Advocates and tendered today are taken on record and marked 'X' for identification.
2. In view of the parties having arrived at a settlement, there will be order in terms of the Consent terms. The undertaking contained in the Consent terms is accepted.
3. In the event of any two defaults or payment of the entire amount as agreed in the Consent terms, the parties shall be at liberty to apply to have the matter listed for appropriate directions. The company petition is disposed of on the above terms.”

4. Asserting that there was default on the part of the Respondent Company in adhering to the terms of the settlement, subject to which the Company Petition came to be disposed, the Petitioners again moved the Court availing liberty to apply contained in paragraph 3 of the order extracted above.

5. By an order dated 14th June, 2021 after extracting the Consent Terms, this Court noted that a Petition under Section 9 of the Insolvency and Bankruptcy Code had been filed against the Respondent by USV Private Limited before the

NCLT, Mumbai and by an order dated 3rd June, 2019 an Interim Resolution Professional (IRP) had been appointed. Instead of restoring the Petition to file, the Company Court directed the Resolution Professional to include the claim of the Petitioner in the list of creditors and discharge the admitted liability of the company to the Petitioners in accordance with law.

6. Paragraph Nos.4 to 6 of the order dated 14th June, 2021 read as under :

“4. When the matter was listed on 11th June 2021, Mr. Kane was directed to give notice to IRP and the matter was stood over to today. An affidavit of one Manali M. Vedpathak affirmed on 12th June 2021 has been filed confirming notice being sent to the Resolution Professional on 11th June 2021 at 4.04 p.m. Nobody is present for the Resolution Professional despite service.

5 Mr. Kane states that the Court may instead of transferring this petition to NCLT under Section 434 of the Companies Act 1956, direct the Resolution Professional to take on file the claim of petitioners and include petitioners claim also in the list of creditors and discharge the liability of the company to petitioners in accordance with law.

6 In view thereof, I am not passing a formal order of restoring the petition but would direct the Resolution Professional, whatsoever stage the resolution process may be at, to include the claim of petitioners in the list of creditors and discharge the admitted liability of the company to petitioners in accordance with law.”

7. The grievance of the Petitioners is that the Respondent (IRP) did not comply with the directions contained in the aforesaid order in letter and spirit. Instead, the Respondent in the communications addressed to the Petitioners made an

endeavour to overreach the order passed by this Court, which constitutes deliberate and willful breach of the aforesaid order dated 14th June, 2021 and, thus, necessitates initiation of action in contempt.

8. An Affidavit in Reply is filed on behalf of the Respondent (IRP).

9. I have heard Mr. Tiwari – Petitioner No.1 in person. Mr. Tiwari submitted that in the light of the aforesaid orders, the Respondent was expected to scrupulously adhere to the directions of this Court and accept the claim of the Petitioners, which represented an admitted liability, without any further enquiry. Instead the Respondent, Mr. Tiwari pointed out, initially vide communication dated 20th July, 2021 took a stand that the claim was to be accepted subject to the provisions of the Insolvency and Bankruptcy Code and called upon the Petitioners to furnish particulars which, according to Mr. Tiwari, were not required in view of the admitted liability. Subsequently, by a communication dated 9th August, 2021, the claim of the Petitioners was admitted to the extent of Rs.1,50,00,000/- only on the premise that there were no documents in support of the interest component. However, vide communication dated 2nd December, 2021, the Respondent took a complete somersault and informed the Petitioners that the claim of the Petitioners did not deserve acceptance as the record revealed that the amounts were repaid during the period 12th August, 2014 to 2nd July, 2015 and the order of admission of the claim was based on an alleged incorrect representations made by the Petitioners.

10. Taking exception to the aforesaid stand of the Respondent, Mr. Tiwari endeavoured to impress upon the Court that the said action constitutes a willful and deliberate contempt of the Court.

11. I am afraid to accede to the aforesaid submission. As the Insolvency Resolution Professional, in my considered view, the Respondent was enjoined, in terms of the aforesaid order of this Court, to consider and adjudicate the claim of the Petitioners. Evidently, the Respondent initially addressed a communication proposing to admit the claim to the extent of principal amount of Rs.1,50,00,000/-, disputing the entitlement to interest. Later on, by the impugned communication dated 2nd December, 2021, the Respondent informed the Petitioners that their claim did not deserve admission as the record revealed that the amounts were already paid on behalf of the Company (in liquidation) during the period 12th August, 2014 to 2nd July, 2015.

12. At this stage and in this proceeding, it may not be necessary to delve into the question as to whether the aforesaid amount of Rs.1,50,00,000/- has, infact, been paid, which the learned Counsel for the Respondent wants the Court to believe by banking upon the contentions in the Affidavit in Reply and the documents annexed thereto. The reason is not far to seek. The question before the Court is not whether the ex-directors of the company committed contempt by not adhering to the undertakings given to the Court, but whether the Respondent (IRP) has, prima facie, committed willful breach of the aforesaid order of the Court.

13. In my view, the order dated 14th June, 2021 passed by this Court cannot be construed as an absolute and unqualified direction to the IRP to admit the claim and discharge the liability in accordance with the Consent Terms executed by the Ex-directors of the Company, as if the claim was adjudicated by the Company Court. On the contrary, the Company Court was careful to direct that the Petitioners claim be included in the list of creditors and the admitted liability of the company be discharged, by the IRP, in accordance with law. If the Petitioners are aggrieved by the refusal to admit their claim by the Respondent, they have to explore an appropriate remedy before an appropriate forum. Thus, the refusal of the Respondent (IRP) to admit the claim of the Petitioners does not, in my view, constitute contempt of the order of this Court.

14. Hence, the Contempt Petition stands dismissed.

(N.J.JAMADAR, J.)