



2023-DHC-8983



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

% **Judgment reserved on: 21 November, 2023**
Judgment pronounced on: 15 December, 2023

+ **CCP(CO.) - 1/2015 & CO.APPL. 846/2023**

M/S KUEHNE + NAGEL PVT. LTD. Petitioner
Through: Mr. Ashok Kumar Chhabra,
Advocate
versus

MR. PREM SINGHEE Respondent
Through: Mr. Pallav Saxena, Mr Vishal
Kapoor, Mr. Karan Khaitan,
Mr. Nipun Sharma, Mr.
Diwaker Goel and Mohd.
Nausheen Samar, Advs. with
respondent in person.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. This judgement shall decide the present Contempt Petition CCP(CO.) 01/2015, preferred under Section 11 read with 12 of the Contempt of Courts Act, 1971¹ against the respondent Mr. Prem Singhee, for non-compliance of the order dated 14.02.2014 and for failure to make complete payment of dues as was undertaken by the respondent in the settlement arrived at between the parties.

¹ CC Act



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**BRIEF FACTS:**

2. Briefly stated, the respondent/contemnor was the Managing Director of SVOGL Oil & Gas Energy Ltd. (SVOGL), a listed company engaged in Oil and Gas Exploration Services, against whom the petitioner moved a Company Petition under Sections 433 and 434 of the Companies Act, 1956² bearing No. CO.PET. 523/2013 titled '*M/s Keuhne + Nagel Pvt. Ltd. v. Mr. Prem Singhee*', seeking winding up of the company for non-payment of dues.

3. It may be noted that the company, SVOGL Oil and Gas Energy Ltd. is currently undergoing liquidation in terms of order dated 28.07.2017 in CO.PET. 446/2013 titled '*Citicorp International Limited v. Shiv Vani Oil and Gas Exploration Services Ltd.*', whereby a Provisional Liquidator was appointed. Thereafter, vide order dated 25.07.2023, the Company Petition along with pending applications have been transferred to the NCLT.

SUBMISSIONS OF THE RESPONDENT/CONTEMNOR:

4. It has been submitted by the respondents that subsequent to the Strategic Debt Restructuring Scheme which was adopted by the company, the lenders of the company assumed majority control over the affairs, management and administration of the company. Furthermore, since the court appointed a Provisional Liquidator, vide order dated 28.07.2017, the company and its management, including the respondent were thereby restrained from alienating, encumbering or parting with the assets of the company. Therefore, it is submitted that even if funds were available and the respondent wanted to make



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payments to the petitioner, he could not have done so. Thus, it is the case of the respondent that his failure to pay the remaining instalments to the petitioner on behalf of the company, does not constitute wilful or deliberate disobedience and violation of the order of this court dated 14.02.2014 as well as the undertaking of the respondent.

5. It has also been submitted on behalf of the respondents that the present contempt petition is barred by limitation, as provided for under Section 20 of the CC Act, per which the court has to duly consider and take cognizance of the contempt within the prescribed period of one year from the date of the alleged contempt and that mere preference of a contempt petition within the statutory period of limitation of one year is not sufficient. It is the case of the respondent that in the present contempt, the court took cognizance after 8 years and 8 months, therefore barring the present petition.

6. The respondent has also made submissions regarding the judgement in **E. Bapanaiah v. K.S. Raju**³, which has been relied on by the petitioner. In this regard it has been stated that unlike the facts of the judgement relied on, in the present matter the respondent has no personal liability arising out of the order dated 14.02.2014, and moreover, since the court has ordered the company to be wound up, the company as well as the respondent stand restrained from dealing with the assets of the company and further that the respondent has already substantially complied with the order dated 14.02.2014,

² The Act

³ (2015) 1 SCC 451



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having made 8 out of the 11 instalments for which he gave an undertaking.

ANALYSIS AND DECISION:

7. Having heard the learned counsels for the parties and on perusal of the material on the record, it is well ordained in law that the CC Act envisages a civil contempt which should demonstrate a wilful disobedience of a decision of the Court. Avoiding long academic discussion, in the cited case of **U.N. Bora v. Assam Roller Flour Mills Assn.**⁴, after examining a plethora of case law⁵ on the subject, it was reiterated that:

- (i) It should be shown that there was due knowledge of the order or directions and that the disobedience is a deliberate, conscious and intentional act.
- (ii) When two views are possible, the element of wilfulness vanishes as it involves a mental element.
- (iii) Since the proceedings are quasi-criminal in nature, what is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature.
- (iv) when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971.

8. In a subsequent decision by the Supreme Court **Urban Infrastructure Real Estate Fund v. Dharmesh S. Jain**⁶ at page 682, the following observations were approved:

“This Court in the case of *R.N. Dey v. Bhagyabati Pramanik* [*R.N. Dey v. Bhagyabati Pramanik*, (2000) 4 SCC 400], held that the weapon of initiating contempt proceedings could not be used for execution of a decree or implementation of an order. That is, a

⁴ (2022) 1 SCC 101

⁵ *Hukum Chand Deswal v. Satish Raj Deswal* - (2021) 13 SCC 166; *Ram Kishan v. Tarun Bajaj* - (2014) 16 SCC 204

⁶ (2022) 6 SCC 662



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court should not invoke contempt jurisdiction, where alternate remedies are available to secure the terms of an order. We are mindful of the fact that contempt proceedings should not be of the nature of ‘execution proceedings in disguise.’

9. Without further ado, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. It is held in umpteen number of cases that the word “wilful” introduces a mental element means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. **It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions.** The act has to be done with malice or without a justifiable excuse or stubbornly, obstinately or perversely. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.”

10. Applying the aforesaid dictum to the instant matter, there is force in the explanation offered by the respondent that he had all the bonafide intention to make payment as per the undertaking given by him on behalf of the company in liquidation but for the subsequent proceedings before the NCLT. Suffice it to observe that it is not a case of intentional violation or wilful disobedience of the order passed by



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this Court to initiate contempt action against the respondent. Instead, we hold that it would be open to the parties to pursue their claim(s) in execution proceedings or any other proceedings, as may be permissible in law in respect of the issue(s) under consideration. In such proceedings, all aspects can be considered by the forum/court concerned on merits in accordance with law.

11. In view of the foregoing discussion, the present Contempt Petition is dismissed.

12. The pending application also stands disposed of.

DHARMESH SHARMA, J.

DECEMBER 15, 2023/ss