

IN THE HIGH COURT AT CALCUTTA
SPECIAL CIVIL JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

CPAN 922 of 2022
With
IA CAN 1 of 2022
IA CAN 2 of 2022
IA CAN 3 of 2022
IA CAN 4 of 2022
IA CAN 5 of 2022
IA CAN 6 of 2022
IA CAN 7 of 2023
IA CAN 8 of 2023
IA CAN 9 of 2023

M/s. Odisha Slurry Pipeline Infrastructure Ltd. & Anr.
Vs.
Rakesh Sharma & Ors.

Appearance:

For the Petitioners	:	Mr. Deepak Khosla, Sr. Adv. Ms. Anjana Banerjee, Adv. Mr. Rohan Nandy, Adv. Mr. Kausik Sahoo, Adv.
For the Respondent Nos. (1-11, 15, 16, 18, 20 & 21)	:	Mr. Joy Saha, Sr. Adv. Mr. Partha Gokhale, Adv. Ms. T. Mukherjee, Adv. Ms. M. Shukla, Adv.

Ms. Sanjana Jha, Adv.

Ms. Surabhi Bihani, Adv.

For the Respondent Nos. 26 & 27 : **Mr. Dipankar Das, Adv.**

Ms. Sarda Hariharan , Adv.

For the Respondent No. 34 : **Mr. Joydeep Kar, Sr. Adv.**

Mr. Abhishek Swaroop, Adv.

Mr. Arkaprava Sen, Adv.

Mr. Naman Kundu, Adv.

For the Respondent No.45 : **Mr. Jishnu Saha, Sr. Adv.**

Mr. Amitava Shukla, Adv.

Ms. Ruby Singh Anuja, Adv.

Mr. Ashutosh P. Shukla, Adv.

For the Respondent Nos. 78-91& 93 : **Mr. Arunabha Deb, Adv.**

Ms. Ashika Daga, Adv.

Mr. Ayush Jain, Adv.

Mr. Vedant Kumar, Adv.

Ms. Deepti Priya, Adv.

Mr. Jishnujit Roy, Adv.

Mr. Joydeep Guha, Adv.

For the Applicant in CAN 6 of 2022 : **Mr. S. K. Kapoor, Sr. Adv.**

Mr. Dwaipayan Basu Mallick, Adv.

For the Srei Infrastructure Finance Ltd. : **Mr. S. N. Mitra, Sr. Adv.**

Mr. Aditya Kanodia, Adv.

Mr. Sankarsan Sarkar, Adv.

Mr. Tanmoy Sett, Adv.

Judgment on : **13.03.2023**

Harish Tandon , J.

A piquant situation arose when the respondents, the alleged contemnors took a plea of demur in maintaining the contempt application at the behest of the petitioners more particularly, the manner in which the cause title is couched and the authority of the petitioner no. 2 to maintain the contempt application for and on behalf of the petitioner no. 1 or on its behalf as well. It is further contended that the contempt jurisdiction being limited in the sense that the court cannot decide the disputed and complex questions of facts nor made a declaratory decree rendering all the orders passed by the competent forum to be an outcome of fraud and thus a nullity. The fulcrum of the entire argument at the behest of the contesting respondent that the contempt application is incompetent at the behest of the petitioner and the allegation as to the violation of the order complained of is untenable and cannot be supported on the face of the pleadings of the contempt application.

The point which involves in the instant writ petition on the basis of the plea of demur is whether *locus standi* of the petitioner is an integral and important facets of maintaining an application for contempt.

The Contempt of Courts Act, 1971 does not contain any express provision touching upon the *locus* of a person to maintain an application for contempt before the High Court. Section 2 (b) of the said Act defines the civil contempt to mean willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of an undertaking given

to the Court. Section 12 deals with the civil contempt and the mode of punishment under the specified contingencies. The aforesaid provision is conspicuously silent on the question of locus so far as it relates to the petitioner of the contempt application; on the other hand, it throws light on the person who can be regarded as a party to the proceeding against whom the contempt application is filed. Sub-Section (3) of Section 12 postulates that if a person found guilty of the civil contempt, the Court may impose a fine or a sentence of imprisonment depending upon the conduct of such person. There is no provision in the Act empowering a person to maintain a contempt application or disability justifying the concept of locus.

The plea of demur was basically founded upon the Rules framed by the Calcutta High Court in relation to the Calcutta High Court Contempt of Court Rules. The aforesaid Rule was promulgated in exercise of power conferred under Section 23 of the Contempt of Courts Act, 1971 and Article 215 of the Constitution of India in order to regulate the applications for contempt filed before the Calcutta High Court. Rule 2 of the said Rules provides:

“Rule 2.- (1) proceedings in connection with a Civil Contempt may be initiated-

(a) By a petition presented by a party or parties aggrieved; or

(b) By the High Court on its own motion; or

(c) On a reference made to the High Court by the subordinate courts as in the case of “Criminal Contempt”.

(2) Proceedings in connection with a criminal contempt may be initiated-

(a) On a motion of the High Court in respect of a contempt

committed upon its own view under section 14 of the Act; or

(b) On its own motion by the High Court under section 15 (1) of the Act; or

(c) On a motion founded on a petition presented by the Advocate-General under section 15 (1) (a) of the Act; or

(d) On a motion founded on a petition presented by any other person with the consent in writing of the Advocate-General under section 15 (1) (b) of the Act; or

(e) On a reference made to the High Court by the subordinate courts under section 15 (2) of the Act, containing the following particulars:

(a) A brief statement of the case;

(b) The particulars of the contumacious acts;

(c) Name, address and other particulars of the respondents along with the copies of the papers relating to contumacious acts.”

The aforesaid Rules are relatable to the initiation of the contempt proceedings before the High Court. Clause (a) of Rule 2 indicates that the

petition for contempt will be presented by a party or parties aggrieved whereas Clause (b) provides for initiation of contempt by the High Court of its own motion. Basically, the entire objection to the maintainability of the writ petition is founded on Clause (a) of Rule 2 of the said Rules for an admitted position that neither the petitioner no. 1 nor the petitioner no. 2 is a party to the proceeding in which the order of injunction was passed and complained of being violated by the alleged contemnors/respondents.

The party is neither defined in the said Act nor in the said rules and it is sought to be contended by the petitioner that the same has to be read in a more holistic manner to include a person or a person aggrieved. An argument is sought to be advanced that different High Courts including the Supreme Court has framed the Rules relating to contempt of its court and consciously omitted to include the word 'Party' which would give a manifest intention of any person feeling aggrieved with the violation of the order of the Court can initiate a contempt proceeding and restriction imposed by the said Rules cannot act as a deterrent in complaining of the violation of the order of the Court.

The ordinary and grammatical meaning of the word 'Party' means person or a number of persons united in purpose of opinion; taking on side of an issue, debate or contest; group of persons united by certain political views; a social gathering or entertainment of invited guests; a group of persons gathered for a specific purpose; one who participates in or is concerned with an affair, action; a person or persons involved in a legal matter.

The meaning of the word 'Party' varies with the context and the purpose and is of wide import. In relation to a contract, the party means a 'Party' to the contract; in relation to a Court proceedings ordinarily, the 'Party' who are arraigned in such litigations are considered as party to such proceedings. It is, thus, referable to a person, be it legal, juristic, individual and/or natural depending upon case to case basis and cannot be squeezed in a straight-jacket formula. The moment the meaning of the 'Party' assumed significance in a civil proceeding it is generally the party impleaded in the said proceeding are regarded as a party. It would be totally different in class action where a non-party is still regarded as a party and the decision taken therein impliedly binds them as well. Therefore, the party has to be understood and construed in perspective of the definition of a civil contempt which has been defined in the Act as other meaning to a party without bearing in mind the definition of a civil contempt even though it includes a person cannot be said to be a safe course more particularly, on the touchstone of the language employed in the Rule 2(1) of the said Rules. The moment the complaint is made of the violation of the judgment, order, direction passed in a proceeding the definition of the 'Party' must be restricted and/or contrived in conjunction with the definition of a civil contempt. Any person who is not a party to the original proceedings where the order is passed; complain whereof has been made, to be regarded as a party in the said Rule nor the expanded definition of the party would be warranted.

Advanced Law Lexicon, 6th Edition of P. Ramanatha Aiyar defines the party as ordinarily one who has or claims to have an interest in the subject

matter of action or proceeding instituted to afford some reliefs to one who sets the law in motion against another person or persons. It further defines that when the word 'Party' is used with reference to a Court its primary meaning is the litigant and has a part to play in a proceeding.

Corpus Juris Secundum Volume 15A has succinctly highlighted the definition of the importance of the word 'Party' in the following "Questions relating to parties to an action generally belong to the form of the remedy rather than to the right, and such questions are decided by the application of the law of the forum. The law of the forum generally governs in determining the capacity of a party to sue or be sued, and an incapacity to sue imposed by a foreign law usually will not be recognized".

What emerged from the aforesaid definition of a party that it cannot be given a definite meaning under the legal jurisprudence but such definition depends upon the nature of the reliefs, the proceeding and the law applicable in this regard. Though the party is intricately related to a person yet such person cannot be regarded as party on disability and forbearance under the law and therefore, the due regard is to be given to the context in which it is so used. The moment the Rules framed by the High Court with regard to the contempt of its own order/judgment or direction and the initiation thereof is restricted to a party or a party aggrieved in the matter concerning civil contempt, it is restricted to a party or parties to an original proceeding for the reason that the order secured by them if violated or the breach is committed

shall affect their right vitally. Therefore, the expression “Party aggrieved” has to be understood in such perspective as any other meaning or expanded meaning would frustrate the intention behind its incorporation.

In course of the hearing, the Counsel for the petitioner informs that a Public Interest Litigation has been filed in this Court challenging the *vires* of Rule 2(1) (a) of the said Rules but till date no order has been passed declaring such provisions as *ultra vires* and, therefore, we do not think that we can make any comment thereupon at this stage so long the words or expressions are in vogue and has not be declared as *ultra vires* to the Constitution of India or the Parent Act or opposed to public policy. The said provision has to be given effect to in pursuit of deciding the ability or disability or incapacitation of a person to initiate a civil contempt before this High Court. It is sought to be argued by the Counsel appearing for the petitioner that the dignity, the majesty and the sanctity of the Court being a paramount consideration, the plea of locus takes a back seat and should not stand as deterrent in initiating a proceeding for contempt. There is no quarrel to the aforesaid proposition as broadly speaking the High Court being the Court of Record is bestowed with the power to punish a person for contempt under Article 215 of the Constitution of India. The Court shall not permit its order or orders to be flouted or violated and permit the wrongdoer to get rid of its wrong provided the Court finds the same to be imminently present on the face of the pleading made in the said application.

Precisely, for such reason Rule 2(b) of the said Rules confers power upon the High Court to initiate civil contempt on its own motion. The Three-Judge Bench of the Supreme Court in case of ***D.N. Taneja vs. Bhajan Lal, reported in (1988) 3 SCC 26*** held that the contempt is a matter between the Court and the alleged contemnor and any person who activated the machinery of the Court under such jurisdiction may bring the notice of the Court certain facts constituting the contempt of Courts. Though the aforesaid judgment was rendered in case of a criminal contempt yet the power of the High Court to initiate *suo moto* contempt proceeding is conferred by virtue of the Rule 2 (1) (b) in relation to the civil contempt and therefore, the Court is not denuded of any power to initiate civil contempt proceeding against a wrong doer who have violated the order, judgment and direction of the Court. We will later deal on whether the Court should exercise a *suo moto* power of initiation a civil contempt even if the petitioners are found incompetent to maintain application for contempt of Court having not satisfied the definition of a party aggrieved under Rule 2 (1) (a) of the said Rule.

The petitioner no. 1 is a company which has been a subject matter of an insolvency proceeding under the IBC at the behest of its creditors or the conglomerate of the creditors and resolution professional plan has been approved and all the shares, preferential equity or otherwise have been effaced and/or reduced to nil. The cause title would reveal that the said petitioner no. 1 is sought to be represented by the petitioner no. 2 as notionally erstwhile, but actually it is lawful and actual shareholder. The moment the resolution

professional plan has been approved and implemented as the record would reveal that the same was challenged at the behest of the creditor, lender or shareholder before the Appellate Authority as well as the Supreme Court got affirmed, the said company cannot be represented through its shareholder or the lender as the said shares get effaced and/or reduced to nil. So far as the petitioner no. 2 is concerned, it is a trust established under the Indian Trust Act, 1882 and is claimed to have been acting through its investment manager. The trust being a legal entity governed by the Indian Trust Act, the assets and the properties of the trust vested upon the trustees and the proceeding before the Court can be initiated through its trustees. In absence of the trustees being arraigned as a party, the trust cannot be represented through its investment manager nor it can derive any right to represent the trust in such capacity. There is no hesitation in our mind, in view of the facts narrated above, the petitioners cannot be regarded as a party or a party aggrieved being not a party in the suit instituted before the Sealdah Court or in the PIL filed before this Court which is still pending. In view of the above, we do not find that Rule 2(1) (a) of the Rules for contempt framed by the High Court has been fulfilled and/or satisfied and therefore, held that the contempt application cannot be maintained at the instance of the present petitioners.

It takes us to another aspect of the matter whether any case has been made out for initiation of the contempt for civil contempt proceedings *suo moto* under Rule 2(1) (b) of the said Rules.

The definition of a civil contempt under section 2 (b) of the Act nor the language employed therein are suggestive of the facts that the Court can initiate a *suo moto* contempt proceeding. The power to initiate *suo moto* proceeding can be traced from Section 14 of the said Act which are applied in a given situation as evident from the language used therein but there has been a discourse in this regard whether the proceeding for civil contempt can be initiated *suo moto* by the court. The Rules framed by the High Court for contempt of courts envisages the power of the Court to initiate *suo moto* proceeding even it comes within the ambit of the civil contempt and such Rules having a statutory flavour cannot be ignored or disregarded. Even otherwise, the Apex Court in case of **Sahdeo Singh alias vs. State of Utter Pradesh & Ors., reported in AIR 2010 SC (SUPP) 790** held that there is no fetter on the part of the Court to initiate a *suo moto* proceeding for disobedience of an order amounting to civil contempt. It is thus, manifest that the High Court can initiate a *suo moto* proceeding for civil contempt for disobedience of the order despite having found that the petitioner who filed the contempt application has no locus as a party or a party aggrieved under Rule 2 (1) (a) of the said Rules. Although the High Court is conferred with the power to initiate proceedings *suo moto* for civil contempt yet it is an ardent duty of the High Court to first satisfy as to whether there has been any violation of an order passed by it. It a paramount consideration of the Court to ascertain any violation of its order for the purpose of issuance of the notice upon the alleged contemnors and such satisfaction should have been recorded in writing so that the person against

whom the aforesaid contempt proceeding is initiated would get a sufficient notice of his alleged role into the violation of the order so that he may get an opportunity to disclose his stand on such perceived allegations. The aforesaid observation gets support from Rule 19 of the said Rules where the Court may summarily reject the said application upon recording the reasons therefor.

The aforesaid point has been dealt with for the simple reason that we have found that the petitioners have a disability to maintain a petition.

Before we deal with the aforesaid point it would be necessary to adumbrate salient facts emerged from the record of the proceedings. The alleged contemnor no.34 i.e., *Essar Steels India Ltd.* was engaged in production of the steel and decided to construct a 253 km long pipeline from Dabuna to Paradeep to be laid 1.5 metres below the ground level. Since the iron ore is the raw material and used for production of the steel, in order to facilitate the transportation and to minimize the cost of transport, such pipeline was constructed so that the Ore having mixed with the water to make it a slurry shall be pumped through the said pipeline running from the iron ore mines to the plant at Paradeep. Subsequently, the said respondent no.34 was facing a financial constraint and thought it fit not to retain the ownership of the said pipeline and decided to sell and transfer the same to another entity and a Business Transfer Agreement was executed and entered between the petitioner no.1 and the said alleged contemnor no.34 on 27.2.2015 at a price of Rs. 4 thousand crores. It would further reveal from the record that a substantial

amount to the tune of the Rs. 2457 crores was paid by the petitioner no.1 to the said alleged contemnor till 16.6.2016. The petitioner no.2 claimed to have invested a substantial amount to purchase the equity of the petitioner no.1 in May, 2015 and thus, became a shareholder. Contemporaneous to the execution of the Business Transfer Agreement (BTA), Right-to-Use Agreement (RTU) was executed by the said respondent so that they can still use and utilize the said pipeline at a charges agreed thereupon for a stipulated period. For the clarity of the facts, it is recorded that both the alleged contemnor no.34 and the petitioner no. 1 were taken to the National Company Law Tribunal (NCLT) under the Corporate Insolvency Resolution Process and the resolution plan was duly approved at the various forums.

Be that as it may, subsequently both the petitioner no.1 and the said alleged contemnor decided to cancel both the BTA as well as the RTU agreements by executing a cancellation deed on 24.6.2016. One of the creditor i.e., *Srei Infrastructure Finance Ltd.* challenged the cancellation deed in Title Suit no. 177 of 2016 before the Court of Civil Judge, Senior Division at Sealdah and moved an application for the interim relief which was declined by the said Civil Judge. The Order declining to pass an interim order was challenged before this Court in FMAT 1310 of 2016 by the said *Srei Infrastructure Finance Ltd.* which was admitted on 22.12.2016 and an interim order directing *status quo* with regard to alienation and transfer in respect of 253 km pipeline being the subject matter of the suit be maintained till 3 weeks after the reopening of this Court after Christmas vacation, was passed. The said order is extended

from time to time and in fact, an application was taken out seeking clarification of an interim order passed on 22nd December, 2016. By an order dated 11.2.2020, the application seeking clarification was disposed of with the categorical finding that there is no ambiguity in the interim order passed on 22nd of December, 2016 as the *status quo* was restricted to alienation and transfer of 253 km pipeline.

The present application for contempt is founded on the fact that despite the said order by which alienation and transfer of the subject pipeline was impeded and/or interdicted, the same has been done and therefore, such action is contumacious and therefore, the Court must activate the provision of the Contempt of Courts Act against the alleged contemnors who are arraigned as respondent in the contempt application. Several facts have been disclosed in the contempt application in order to prove that the transfer and alienation of the pipeline has been made despite the order of injunction passed by this Court which runs into several pages of the contempt application. The aforesaid allegations can be summarized in the following:

- (i) The audited balance-sheet of the alleged contemnor no.34 of the financial year ending 31st March, 2016 signed on 22.11.2016 discloses that the said pipeline belonging to the petitioner no.1 stood transferred to the alleged contemnor no.34 after the institution of the said title suit despite the fact that the cancellation deed was executed on 24.6.2016.

- (ii) It is revealed in 2022 that in the month of November/December, 2018 the alleged contemnor nos. 79 to 93 have treated certain payments made by the alleged contemnor no. 34 to the petitioner no.1 Company after 24.6.2016 as avoidance transaction by virtue of the said cancellation deed.
- (iii) The alleged contemnor no.34 is continuing to assert that it owns the aforesaid pipeline transferred to it by the petitioner no.1 even after the order dated 22nd December, 2016 passed by this Court. The resolution plan approved by NCLT constituting of one judicial member is in flagrant violation of mandatory requirement of Section 419 (3) of the Companies Act, 2013 which postulates the composition of a member (judicial) and a member (technical).
- (iv) The alleged contemnor no. 34 is continuing to avoid the payment of Right-to-Use charges to the petitioner no.1 who still own the pipeline and such refusal is founded upon the assertion that the petitioner no.1 is no longer owner of the said pipeline which tantamount to a transfer and/or alienation of the said pipeline despite the order of *status quo* having passed by this Court on 22nd December, 2016.
- (v) The alleged contemnor no. 34 have consciously, willfully and deliberately suppressed its balance-sheet to the public which tantamount to interfere in due course of the judicial proceeding and also in administration of justice.

Such being the foundation of the instant contempt application, let us examine whether there is any attempt or contemplation or in fact actual and deliberate violation of the order of injunction dated 22nd December, 2016 passed by this Court warranting the initiation of the *suo moto* proceeding for civil contempt. In course of an argument and even some of the averments made in the contempt application would reveal that this Court holds that there is no civil contempt yet the conduct of the parties and the manner in which the parties have acted before the different forums invite the initiation of the *suo moto* proceeding for criminal contempt as it tends to or actually interferes with the administration of justice as well as tarnishing the image and reputation and the sanctity of the Court. The litigation has travelled in different forums and under the different provisions of the Act and we do not find any element disclosed in the said application that any attempt was made to stay the aforesaid proceedings or any order being passed in this regard. The fact remains that the proceedings before the NCLT continued and reached the final destination, upon approval and acceptance of the resolution plan. The respondent no. 34 was admitted in Corporate Insolvency Resolution Process before the National Company Law Tribunal, Ahmedabad under the Insolvency and Bankruptcy Code, 2016. The respondent no.45 was held as successful resolution applicant initially by the committee of creditors of the said respondent no.45 and secondly, by the NCLT, Ahmedabad on the basis of an order passed under Sections 30 and 31 of the IBC. The said resolution plan was challenged before the National Company Law Appellate Tribunal and the

said appeal was dismissed which was further challenged before the Supreme Court. The Supreme Court also dismissed the appeal on 15.11.2019 by passing a judgment in case of ***Committee of Creditors of Essar Steels Ltd. vs. Satish Kumar Gupta & Ors., reported in (2020) 8 SCC 531*** . A review application was taken out before the Supreme Court which was further dismissed on 25.8.2020. It can be safely proceeded on basis of the aforesaid fact that the resolution plan was approved by the NCLT and affirmed up to the Supreme Court and thus, attain finality.

Contemporaneously, the petitioner no.1 was also admitted in Corporate Insolvency Resolution Process by the National Company Law Tribunal, Cuttack on 14.5.2019. Again the respondent no.45 who emerged as resolution applicant in contemnor no.34 was also declared as the successful resolution applicant and the resolution plan was unanimously approved by the Committee of Creditors of the petitioner no.1 followed by an order passed by the NCLT under Section 30/31 of the IBC. The appellant of FMAT 1310 of 2016 wherein the order of *status quo* with regard to the transfer and alienation of the subject pipeline was passed along with the petitioner no.2 challenged the said order of approval passed by the NCLT to the resolution plan approached the National Company Law Appellate Tribunal but could not emerge successful therefrom as their appeal was dismissed on 18.1.2022. Although the petitioner no.2 did not proceed further yet the said appellant challenged the said order of the NCLAT before the Supreme Court and the Special Leave Petition was eventually dismissed. The resolution plan in respect of the petitioner no.1 as

well as the alleged contemnor no.34 would reveal that all the shares held by the respective members were effaced and/or reduced to nil.

It has been pleaded in the instant application that the parties have prevaricated the stands before the different fora i.e., at one point of time it is contended that the pipeline belong to the petitioner no.1 on the other, it is contended that it belonged to the alleged contemnor no.34. The fulcrum of the entire allegations running into several pages are founded on a assertion that the moment the pipeline was transferred to the petitioner no.1 by the alleged contemnor no.34 and the deed of cancellation being the subject matter of the suit in the Sealdah Court was subject to the approval of the lender and the stakeholder including the shareholder, the same cannot be regarded as a complete transfer of the said pipeline and therefore, was not given effect to at any point of time. However, the cancellation deed is the subject matter of challenge in the suit before the Sealdah Court and the appeal has sprung therefrom in which the order of the *status quo* order with regard to the transfer and alienation of the pipeline is passed by this Court and the said appeal is still pending, so the suit before the Sealdah Court.

In the interregnum, the proceeding before the NCLT was initiated and ultimately the resolution plan has been approved and implemented by the parties. The resolution plan would reveal that the said aforesaid pipeline was always intended to be a property of the respondent no.34 and after the approval of the resolution plan recognizing the alleged contemnor no.34 as a

successful resolution plan applicant. No further deliberation is required thereupon as the order approving the resolution plan was affirmed up to the Supreme Court and therefore, whatever has been expressly provided therein is binding on the parties.

The contention is sought to be raised by the petitioner that the approval of the resolution plan by a single member (judicial) is a nullity and void *ab initio* and therefore, no credence nor effect can be given thereto. It is further contended that the moment an order is a nullity, no formal declaration is required in this regard but can be taken as a point of defence before any forum. There is a fallacy in the aforesaid submission for the simple reason that the petitioners challenged the order of approving the resolution plan and the plea of nullity was available in the aforesaid proceedings. Section 419 (3) of the Companies Act, 2013 clearly provides that single member (judicial) may function as a Bench and exercise the power of the Tribunal in respect such class of cases or such matters pertaining to such class of cases as a president made by general or special order may be specified. It cannot be said at this stage that the single member (judicial) is denuded of absolute power to function as a Bench if such powers have been conferred by the president by a general or special order. It is no doubt true that the nullity strikes at the root of the jurisdiction and even can be taken as a ground of attack or defence in a collateral proceedings or by instituting an independent proceeding, yet, we have to consider whether the same can be taken as a plea of attack in a contempt jurisdiction despite the unbridled power having conferred upon the

High Court by virtue of Article 215 of the Constitution of India. We have been given to understand that based upon such plea, a proceeding has been initiated and the matter is still *sub judice*. It would not be proper for the High Court in exercise of the contempt jurisdiction to hold the person guilty of violating the order of the Court if the facts emanate from the record would reveal that certain acts have been done in due implementation of the order passed by the competent forum. It may remotely suggest the technical contempt but the moment the approach is made to a forum raising a plea of nullity it is advisable that the court should not initiate a contempt proceeding when the act complained of is in due implementation of the order passed by the forum in exercise of the power conferred by the statute. Such orders passed by the NCLT though after the interim order passed on 22nd December, 2022 yet, those were passed in a proceeding which cannot be said to be invalid but in exercise of power conferred by the statute. The order approving the resolution plan is affirmed up to the Supreme Court and therefore, simply because a plea of nullity has been taken does not appear to us *prima facie* to be so in view of the language employed in Section 419 (3) of the Companies Act, 2013. It would not be proper for the Court to issue a notice or admit on first motion the contempt application as it tends to interfere with the administration of justice. Even if the Court finds that the contempt may be presumed but is too venial to justify it being brought to the attention of the Court, there is no difficulty in dismissing the motion. It has been highlighted in case of ***Rizwan-Ul-Hasan & Anr. Vs. State of Uttar Pradesh, reported in AIR 1953 SC 185***

that the jurisdiction in contempt is not to be invoked unless there is real prejudice to the cause of justice. The Court may refuse to exercise its jurisdiction upon a mere question of propriety. We thus, do not find that it is a fit case where the notice is required to be issued as an order approving the resolution plan passed by the single member (judicial) functioning as a Bench is presumed or perceived to be a nullity.

The matter can be viewed from another angle. The stand of the parties in relation to the said pipeline is on the basis of the orders passed by the NCLT and affirmed up to the Supreme Court. If a contempt is initiated on the teeth of the aforesaid orders at this stage, it would have an implied effect on rendering those orders ineffective and redundant and the person who have acted on the basis of the aforesaid order would still be punished being a guilty of violation of the order. If the status of the pipeline has been declared in a resolution plan affirmed up to the Supreme Court it is too technical at this stage, to issue a notice upon the alleged contemnors being guilty of violative of the said order.

A plea of fraud is also taken in the contempt application that the parties have fraudulently acted before the NCLT as well as the Supreme Court and obtained the order therefrom. We are not unmindful of the settled proposition of law that the fraud unravels all action yet the particulars of the fraud is to be spelt out with perception and clarity. A beneficiary of the fraudulent act cannot reap the benefits therefrom but equally unless the court finds without

any reasonable doubt that the fraud has been committed, it would not be proper at the nebulous stage to initiate a contempt proceeding and punish a person. In whatever way, we peruse the pleadings of the contempt application, we do not find that it is a fit case to admit the motion and to issue a notice upon the alleged contemnors.

The contempt application is thus dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)