

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO. 3 OF 2021
IN
ARBITRATION PETITION NO. 309 OF 2020**

Starlift Services Pvt. Ltd.	...	Petitioner
vs.		
Alba Asia Pvt. Ltd. and others	...	Respondents

**WITH
INTERIM APPLICATION (LODGING) NO. 14498 OF 2023
WITH
INTERIM APPLICATION (LODGING) NO. 14495 OF 2023
WITH
INTERIM APPLICATION (LODGING) NO. 14427 OF 2023
IN
CONTEMPT PETITION NO. 3 OF 2021**

Mr. Sharan Jagtiani, Senior Advocate, a/w. Mr. Nirman Sharma, Mr. Ranjit Shetty, Ms. Priyanka Shetty and Ms. Avina Karnad, i/b. Argus Partners for petitioner.

Mr. Navroz H. Seervai, Senior Counsel, a/w. Mr. Shyam Kapadia, Mr. Farhad Sorabjee, Ms. Shanaya Cyrus Irani and Mr. Siddhesh S. Pradhan, i/b. J. Sagar Associates for respondent Nos.2 to 4 in CONP/3/21.

**CORAM : MANISH PITALE, J
RESERVED ON : 22nd FEBRUARY, 2024
PRONOUNCED ON : 26th APRIL, 2024**

JUDGMENT

. The petitioner-company has alleged in this petition that the respondents have committed contempt of this Court, by willfully disobeying specific direction issued by this Court in the order dated 17.02.2020 passed

in Arbitration Petition (Lodging) No.7/2020 (later numbered as Arbitration Petition No.309/2020). The petitioner seeks imposition of maximum punishment on respondent Nos.2 to 4 as Directors and persons in-charge of the affairs of the respondent No.1-company. The respondent Nos.2 to 4 filed their affidavits in reply in the contempt petition. It is relevant to note that at pre-admission stage, respondent No.4 had filed an affidavit in reply on behalf of respondent No.1-company.

2. After admission of this contempt petition, the notice issued to respondent No.1-company, was returned with the remark 'left'. The petitioner contends that in such circumstances, the present petition can be heard even against the respondent No.1-company.

3. Before advertng to the rival submissions, it would be appropriate to briefly refer to the chronology of events leading to filing of the present contempt petition.

4. The respondent No.1-company i.e. Alba Asia Private Limited was incorporated on 18.11.2008 as a 50-50 joint venture between Louis Dreyfus Armateurs SAS (LDA) and Starport Logistics Limited (earlier called ABG Ports Limited). The said Starport Logistics Limited is a wholly owned subsidiary of Starlog Enterprises Limited, which is the parent company of the petitioner herein. It is stated on behalf of the respondents and not denied by the petitioner that Starlog Enterprises Limited has 84.99% shareholding in the petitioner-company i.e. Starlift Services Private Limited.

5. On 25.10.2017, the petitioner and respondent No.1 entered into a contract for hiring Mobile Harbour Crane (MHC) from December 2017 to

February 2019, which was subsequently extended for a further period of one year. The respondents have placed much emphasis on the fact that at the said stage when the aforesaid contract was executed in the year 2017, the promoter of Starport Logistics Limited i.e. Mr. Saket Agarwal was also the director of respondent No.1-company alongwith one Mr. Ravishankar Gopalan, with respondent Nos.2 and 3 i.e. Gildas Patrick Michel Maire and Antoine Louis Henri Person, both French nationals, being the other two directors. It is also a matter of record that during the period between 2018 to 2019, the said Mr. Saket Agarwal proposed the name of respondent No.4 i.e. Mr. Anurabh Tripathi as director of respondent No.1-company, but the said proposal was rejected by respondent No.2. However, respondent No.4 continued to provide assistance and consultation to respondent No.1-company.

6. On 18.02.2019, the said Mr. Saket Agarwal and Mr. Ravishankar Gopalan resigned as directors of respondent No.1-company, with the result that only respondent Nos.2 and 3 were left as the directors.

7. It is the case of the petitioner that till October 2019, the hire charges for MHC were paid every month by respondent No.1, on the basis of the invoices raised by the petitioner. Thereafter, the invoice raised in November 2019 was partly paid, after which respondent No.4 sent an email to the petitioner, expressing inability to make payment towards hire charges of MHC. Correspondence was exchanged between the petitioner and respondent No.1 with regard to the payment of such amounts and in the backdrop of dispute arising between the parties, on 02.01.2020, the petitioner filed an arbitration petition under Section 9 of the Arbitration and Conciliation Act, 1996 (Arbitration Act). On 07.01.2020, this Court passed

an order in the arbitration petition, directing respondent No.1 to file a disclosure affidavit and restrained it from creating any third-party rights in its assets. On 30.01.2020, respondent No.4 filed a disclosure affidavit, as the authorized signatory of respondent No.1.

8. On 17.02.2020, this Court heard the parties and disposed of the arbitration petition, by directing respondent No.1 to deposit an amount of Rs.1,21,80,000/- in this Court within four weeks from the date of the order. It was further clarified that if the respondent No.1 failed to make such deposit, the right of the respondents to file statement of defence or a counter-claim in arbitral proceedings, would be taken away. In other words, the filing of such a statement of defence or a counter-claim was expressly made conditional to such deposit. This Court found that since the arbitration clause had been invoked, an arbitrator could be appointed. Accordingly, a sole arbitrator was appointed for resolution of disputes between the parties.

9. The period of four weeks for making the deposit expired on 16.03.2020 and on 17.03.2020, the petitioner filed the present contempt petition. At the pre-admission stage, the respondent No.4, as an authorized signatory of respondent No.1, filed a reply affidavit. Thereupon, the contempt petition was admitted and respondent Nos.2 to 4 filed their reply affidavits.

10. It is the case of the respondents that due to heavy financial losses, in February 2020 itself, the respondent No.1-company closed down its business operations in India and that it was constrained to vacate its office premises at Nariman Point, Mumbai. In the reply affidavits filed by respondent Nos.2 to 4, it was claimed that they had not willfully disobeyed the direction

contained in the order dated 17.02.2020 and unconditional apologies were also tendered. It was claimed that the respondents had not siphoned off monies from January to July 2020, as alleged by the petitioner. It was submitted that the monies were paid for meeting necessary obligations of the respondent No.1-company. It was further submitted that the aforesaid Mr. Saket Agarwal had himself acted in a manner detrimental to the interest of respondent No.1-company, despite being its director and thereafter, he resigned, leaving the respondent No.1-company in the lurch. It was alleged that the financial difficulties faced by respondent No.1-company were largely due to the aforesaid actions of Mr. Saket Agarwal. It was further claimed that the petitioner could very well seek execution of the direction issued in order dated 17.02.2020 and the drastic remedy of invoking the provisions of the Contempt of Courts Act, 1971 (hereinafter referred to as the Contempt of Courts Act) was not an option available to the petitioner, in the facts and circumstances of the present case. It was further claimed that due to the Covid-19 pandemic and ensuing lockdowns, amounts that were expected from third party vendors were held up. Therefore, respondent No.1-company could not recover from its financial difficulties. On this basis, it was submitted that there is no merit in the contempt petition.

11. The arbitral proceedings continued in the meanwhile and on 30.11.2020, the learned arbitrator disposed of an application filed under Section 17 of the Arbitration Act, attaching all the assets, properties, receivables and bank accounts of respondent no.1. The directors, authorized signatories and officers of respondent No.1 i.e. respondent Nos.2 to 4 herein, were restrained from creating any third-party rights and interests in the assets, properties and receivables of respondent No.1.

12. On 17.08.2021, the final arbitral award was passed, whereby respondent No.1 was directed to pay to the petitioner an amount of Rs.1,21,80,000/- for the pending invoices with a further sum of Rs.19,17,528/- towards interest and to pay interest @ 7.4% p.a. on the amount of Rs.1,21,80,000/-. The respondent No.1 was further directed to pay cost of arbitration of Rs.14,24,126/-. It is undisputed that the petitioner has filed an execution application before this Court, for execution of the said arbitral award. In the meanwhile, the interim awards passed during the pendency of the arbitral proceedings, were extended in a post-award petition filed by the petitioner under Section 9 of the Arbitration Act.

13. Upon the contempt petition being taken up for hearing, the learned counsel for the parties were heard at length. Mr. Sharan Jagtiani, learned senior counsel appearing for the petitioner submitted that in the light of the admitted position that the respondent No.1-company failed to obey the specific direction in the order dated 17.02.2020 passed by this Court for depositing an amount of Rs.1,21,80,000/- within the stipulated period of time, a clear case of willful disobedience of direction of this Court, has been made out. He submitted that the conduct of the respondents stood clearly covered under the definition of “civil contempt”, under Section 2(b) of the Contempt of Courts Act. He submitted that, at the time when the aforesaid direction was passed on 17.02.2020, the amounts available in the bank accounts of the respondent No.1 came to a total of Rs.1,26,07,327/-. This amount was enough to abide by the said direction of this Court to deposit the amount of Rs.1,21,80,000/- within the stipulated period of four weeks from 17.02.2020. But, the respondent No.1-company deliberately siphoned off amounts from the said accounts, as a consequence of which, the balance in the said bank accounts was drastically reduced, by the time the period of

four weeks granted by this Court, expired. This was nothing but deliberate action on the part of the respondents to disobey the order of this Court, thereby demonstrating that a clear case of “civil contempt”, as defined in Section 2(b) of the said Act, was made out.

14. It was submitted that such actions of siphoning off monies continued even after the present contempt petition was filed on 17.03.2020, indicating the brazen approach adopted by the respondents. The direction contained in the order of this Court was shown scant regard by the respondents by undertaking such actions. It was further submitted that even if it was necessary to disburse one or two amounts, either for satisfying statutory liability or for payment for salaries and dues of employees, none of the other heads under which amounts were disbursed, could be justified. It was submitted that the respondent No.1-company deliberately gave priority to such sundry payments, instead of showing due regard to the aforesaid direction of this Court to deposit specific amount within the stipulated period of time. No attempt was ever made by respondent No.1 to approach this Court in order to seek extension of time for depositing the amount or at least for depositing part of the amount, while explaining why the entire amount could not be deposited. The approach of respondent No.1-company, through respondent Nos.2 to 4, demonstrated disregard for the specific direction passed by this Court. On this basis, it was submitted that in the present case, the respondents willfully disobeyed the specific direction of this Court and hence, they are liable to be punished for contempt of Court.

15. The learned senior counsel for the petitioner, in support of the aforesaid submissions, relied upon the judgments of the Supreme Court in the cases of *Reliance Communications Limited and others vs. State Bank of*

India and others [(2020) 17 SCC 528] and *HSBC PI Holdings (Mauritius) Limited vs. Pradeep Shantipershad Jain and others (2022 SCC Online SC 827)* and judgment of this Court in the case of *Rashtriya Mill Mazdoor Sangh vs. M/s. Khatau Makanji Spg. & Wvg. Co. Ltd. and others [1998 (1) Mh.L.J. 84]*.

16. It was further submitted on behalf of the petitioner that the respondents cannot claim that the present contempt proceedings are not maintainable because the petitioner has the option of initiating execution proceedings in respect of order dated 17.02.2020 passed by this Court. Reliance was placed on the judgment of the Supreme Court in the case of *Urban Infrastructure Real Estate Fund vs. Dharmesh S. Jain and another [(2022) 6 SCC 662]*, to contend that the availability of the option of executing the order, cannot be a defence in a case of contempt. Merely because an order could be executed, in itself cannot be a ground for a party indulging in contumacious conduct to wriggle out of the liability under the Contempt of Courts Act. Reliance was also placed on the judgment of Madras High Court in the case of *India Forge and Drop Stampings Ltd. vs. India Forge and Drop Stampings Employees' Union, Madras (1990 SCC OnLine Madras 607)*, to contend that when a petitioner approaches the Court to punish the opposite party for disobedience of the order of the Court, it cannot be said that the petitioner is using the proceedings to get the order executed. On the contrary, the contumacious conduct of the opposite party is sought to be brought to the notice of the Court for appropriate action, so as to uphold the majesty of law. Reliance was also placed on the judgment of this Court in the case of *Sarladevi Bharkumar Rungta vs. Bharkumar Shivprasad Rungta and another (1988 Mh.L.J. 9)*, wherein it was observed that even if a petitioner could take recourse to execution proceedings, the

same could not take away or curb the powers of the Court in suitable cases to punish for its contempt.

17. It was further submitted on behalf of the petitioner that the respondents cannot escape the consequences of their contumacious conduct by claiming that since the said order dated 17.02.2020 itself provides for an adverse consequence i.e. the opportunity of filing statement of defence or a counter-claim in the arbitral proceedings being taken away, it is enough to demonstrate that the contempt proceedings would not be maintainable. It was submitted that in the facts and circumstances of the present case, the order dated 17.02.2020 cannot be said to be a self-operating order, providing for an adverse consequence. According to the learned senior counsel for the petitioner, the very fact that such a consequence was provided in the said order, indicated the seriousness with which this Court expected compliance with its direction of depositing specific amount within the stipulated period of time. It would be a travesty that the condition imposed for strict observance of a positive direction, could become the basis and an escape route for the respondents to avoid consequences of their contumacious conduct. The learned senior counsel for the petitioner sought to distinguish the judgments upon which the respondents placed reliance in this regard i.e. judgment of Allahabad High Court in the case of *Narain Singh vs. Lala Rajendra Lal and others* (1976 SCC OnLine Allahabad 425), judgments of this Court in the cases of *Mahesh Govardhan Khilnani vs. Ms. Ritika* (2016 SCC OnLine Bom 8396) and *Nirmal Urban Co-operative Bank Ltd. vs. Mamta Keneddy Naidu* (2019 SCC OnLine Bom 5636) and judgment of Delhi High Court in the case of *Indian Overseas Bank vs. Lalit Kumar Aggarwal and another* [2000 (55) DRJ 524].

18. It was further submitted that the respondents cannot claim that they have already suffered a punitive consequence due to failure to deposit the amount, as they could not file statement of defence or counter-claim in the arbitral proceedings, as a consequence of which, the proceedings resulted in an arbitral award, which is being executed by the petitioner. It was specifically submitted that the direction preventing the respondents from filing their statement of defence or counter-claim in the arbitral proceedings, cannot be said to be punitive and this is evident from the fact that such a consequence is contemplated even under Order XXXIX Rule 11 of the Code of Civil Procedure, 1908 (CPC) (Maharashtra Amendment). It was submitted that even in the judgment on which the respondents have placed reliance in this regard i.e. judgments of this Court in the cases of *Rajesh H. Parikh vs. Deepika R. Parikh* (2012 (3) Mh.L.J. 331) and *Shardul Shamprasad Dev vs. Manjiri Shardul Dev and others* (2022 SCC OnLine Bom 3908), this Court has recognized the power to strike off the defence of a party, while observing that such power has to be exercised with caution.

19. The learned senior counsel further submitted that the respondents cannot challenge the very maintainability of the contempt petition on the ground that it invokes only Section 12(5) of the Contempt of Courts Act. It was submitted that a holistic and proper reading of the contempt petition, would show that, apart from invoking the provisions of the Contempt of Courts Act, the petitioner has also invoked Article 215 of the Constitution of India, which reserves the power in this Court to punish for its contempt. The liability of respondent Nos.2 to 4 arises from the fact that they are the persons, who were in-charge of the affairs of respondent No.1-company. It was submitted that there is a fundamental flaw in the contention raised on behalf of the respondents that Section 12(5) of the Contempt of Courts Act,

to punish respondent Nos.2 to 4, can be invoked only in cases where an undertaking has been given to the Court and such undertaking has been violated. It was submitted that the interpretation sought to be placed by respondent on Section 12(5) read with Section 12(4) thereof, is a narrow and pedantic interpretation, which militates against the very object of the Contempt of Courts Act. It was specifically stated that Section 12(5) of the Contempt of Courts Act cannot be read in isolation and it has to be read with the other provisions thereof, particularly Section 2(b) and Section 12(3). Upon a proper reading of the same, according to the learned senior counsel for the petitioner, it becomes evident that when a direction of the Court has been willfully disobeyed, as in the present case, respondent Nos.2 to 4, being directors and in-charge and responsible for the respondent No.1-company, deserve to be punished for having committed contempt of this Court. In this regard, reliance was placed on observation made by this Court in **Rashtriya Mill Mazdoor Sangh vs. M/s. Khatau Makanji Spg. & Wvg. Co. Ltd. and others** (*supra*).

20. It was further submitted that the contempt petition sufficiently invokes Article 215 of the Constitution of India also while seeking to punish the respondents for having committed contempt of this Court. It was submitted that the respondents were not justified in claiming that no case was made out under the Contempt of Courts Act in the present case as the power of the Court could be exercised only in consonance with the provisions thereof. It was submitted that the respondents cannot rely on the judgment of the Supreme Court in the case of *Pallav Sheth vs. Custodian and others* [(2001) 7 SCC 549]. It was submitted that the ratio of the said judgment was being misread and that in any case, the said judgment was explained in the subsequent judgment of the Supreme Court, in the case of *Vijay Kurlle, In Re*

and others [(2021) 13 SCC 616]. In the said judgment, the Supreme Court held that in the case of **Pallav Sheth vs. Custodian and others** (*supra*), only the question of limitation, prescribed in the Contempt of Courts Act, was considered. On this basis, it was submitted that the frame of the contempt petition was proper and that such a petition could certainly lead to the respondents being punished for their contumacious conduct.

21. It was further submitted that the respondent No.4 cannot escape liability by contending that he was not a director in the respondent No.1-company. The documents on record sufficiently demonstrate that he was very much in-charge of the affairs of respondent No.1-company. He corresponded with the petitioner when the disputes arose between the parties. He was authorized to take decisions as also to negotiate with the petitioner. It was further submitted that respondent No.4 had filed affidavit on behalf of respondent No.1-company in the present contempt petition at the pre-admission stage and that therefore, the respondent No.4 is liable, alongwith respondent Nos.2 and 3, for having committed contempt of this Court.

22. It was submitted that despite the fact that the contempt petition was admitted and notice issued to respondent No.1 had returned with the remark 'left', this Court can certainly proceed against respondent No.1. At the pre-admission stage, the respondent No.1 had filed an affidavit in reply. Respondent Nos.2 to 4, despite being directors and in-charge of the affairs of the respondent No.1-company, refused to give the new address of the office of the respondent No.1-company. Reliance was placed on the judgment of this Court in the case of *Medi Carriers Pvt. Ltd. vs. Frontiango Life-sciences Pvt. Ltd.* (2016 SCC OnLine Bom 6814), wherein this Court held that so long

as there was no dispute that the registered office of the respondent No.1-company, was the same as shown in the record of the Registrar of Companies and notice was sought to be served on the same address, but it returned with the remark 'left', the same had to be treated as good service. It was submitted that the said position of law was reiterated in the subsequent judgments of this Court in the case of *Sanghvi Movers Limited vs. Delta Infra Limited* (2017 SCC OnLine Bom 5568) and *State Trading Corporation of India Limited vs. Shalimar Rexine India Limited* (2016 SCC OnLine Bom 2337). On this basis, it was submitted that this Court may consider the aforesaid contentions as against all the respondents. The petitioner having made out a case of civil contempt against all the respondents under the provisions of the Contempt of Courts Act read with Article 215 of the Constitution of India, they ought to be awarded maximum punishment.

23. On the other hand, Mr. Seervai, the learned senior counsel appearing for the respondents submitted that in the facts of the present case, the petitioner was trying to settle scores with the respondents, in the backdrop of the disputes that arose in the functioning of the respondent No.1-company. The whole attempt of the petitioner was to somehow pressurize and harass the respondents and that the provisions of the Contempt of Courts Act ought not to be permitted to be misused in such a manner. It was submitted that the respondents cannot be held guilty of willful disobedience of the direction of this Court and that therefore, no case is made out for granting the prayers made in the present petition.

24. The learned senior counsel appearing for the respondents placed much emphasis on the manner in which the aforesaid Mr. Saket Agarwal and Mr. Ravishankar Gopalan abruptly resigned as directors of the respondent No.1-

company on 18.02.2019. It was alleged that the said Mr. Saket Agarwal, being the promoter and director of Starport Logistics Limited and Starlog Enterprises Limited, being also a director in respondent No.1-company, had literally run it to the ground by his activities. It was alleged that while the joint venture partner LDA had infused huge finances in respondent No.1-company, Mr. Saket Agarwal and Starport Logistics Limited controlled by him, did not infuse any capital from January 2015 onwards. Respondent Nos.2 and 3, being French citizens and on their understanding that at least two directors were necessary in respondent No.1-company, continued in the said company, despite the abrupt resignations of Mr. Saket Agarwal and Mr. Ravishankar Gopalan. It was submitted that the petitioner very well knew the liquidity crunch faced by the respondent No.1 and yet, pressed for recovery of monies for the petitioner-company of which, the aforesaid Starlog Enterprises Limited has 84.99% shareholding, which in turn is promoted and controlled by the said Mr. Saket Agarwal. A frontal attack was launched on the petitioner, to indicate that contempt jurisdiction of this Court was being invoked only to settle personal scores with respondent Nos.2 to 4.

25. It was further submitted that a perusal of the contempt petition and the prayers made therein, indicated that the petitioner invoked Section 12(5) of the Contempt of Courts Act against the respondents. Much emphasis was placed on the language of Sections 12(4) and 12(5) of the Contempt of Courts Act, to submit that the aforesaid provisions would apply, only where an undertaking was given to the Court on behalf of a company and such an undertaking was violated. It was emphasized that in the present case, even the petitioner did not claim that there was an undertaking given to this Court, which was violated. On this basis, it was submitted that the frame of

the contempt petition itself does not justify any action against the respondents. Mere reference to Article 215 of the Constitution of India in the title of the petition, would not come to the rescue of the petitioner to maintain the contempt petition before this Court. On this short ground, it was submitted that the present petition deserved to be dismissed.

26. It was further submitted that even if this Court was to consider the facts and circumstances of the present case, no case of willful disobedience was made out. It was highlighted that initially, the petitioner claimed that the respondents had siphoned off amounts from the bank accounts of the respondent No.1-company, only with a view to avoid depositing the amount specified in the order dated 17.02.2020. But, during the course of arguments, it was claimed that the respondents prioritized sundry payments over the duty to abide by the specific direction of this Court. By referring to the amounts disbursed by respondent No.1-company during the relevant period, it was submitted that none of such disbursements could be said to be a deliberate attempt on the part of the respondents to avoid obeying the command of this Court. The judgments relied upon by the petitioner were sought to be distinguished i.e. the judgments in the cases of **Reliance Communications Limited and others vs. State Bank of India and others** (*supra*), **Urban Infrastructure Real Estate Fund vs. Dharmesh S. Jain and another** (*supra*), **Rashtriya Mill Mazdoor Sangh vs. M/s. Khatau Makanji Spg. & Wvg. Co. Ltd. and others** (*supra*) and **HSBC PI Holdings (Mauritius) Limited vs. Pradeep Shantipershad Jain and others** (*supra*).

27. It was further submitted that the intention of the petitioner of invoking contempt jurisdiction with a view to pressurize the respondents, can be gauged from the fact that the time period of four weeks from 17.02.2020,

expired on 16.03.2020 and on the very next day i.e. on 17.03.2020, the petitioner filed the contempt petition. The petitioner was also aware about the amounts available in the bank accounts of respondent No.1-company and such material was used to create a picture before this Court that there was willful disobedience on the part of the respondents. Attention of this Court was invited to the contents of the affidavits filed by the respondent Nos.2 to 4, wherein the precarious financial condition of respondent No.1 was highlighted. In the affidavits, it was stated that the aforesaid Mr. Saket Agarwal was also responsible for the said precarious financial condition. It was highlighted that respondent Nos.2 and 3, being French citizens, did try to make efforts to resolve the situation and that third-party recoveries of respondent No.1 were adversely hit because of Covid-19 pandemic and ensuing lockdowns. By emphasizing on the aforesaid contents of the affidavits, the learned counsel for the respondents submitted that the present case could not be said to be a case of willful disobedience on the part of the respondents.

28. It was further submitted that in the affidavits in reply, the respondent Nos.2 to 4 had taken a specific stand that the petitioner could execute the order dated 17.02.2020, indicating that contempt jurisdiction was being invoked only to pressurize and harass the respondents. It was further submitted that in any case, the order of this Court was a self-operating order, providing for a consequence, in case the respondent No.1 failed to deposit the aforesaid amount in the stipulated period of time. The respondent No.1 had suffered such an adverse consequence, as a result of which today, it faces execution of an award passed in favour of the petitioner in the arbitral proceedings. On this basis, it was submitted that no case for contempt was made out. In this regard, reliance was placed on judgments in the cases of

Narain Singh vs. Lala Rajendra Lal and others (*supra*), **Mahesh Govardhan Khilnani vs. Ms. Ritika** (*supra*), **Nirmal Urban Co-operative Bank Ltd. vs. Mamta Keneddy Naidu** (*supra*) and **Indian Overseas Bank vs. Lalit Kumar Aggarwal and another** (*supra*).

29. It was further submitted that the consequence of denial of opportunity to file a statement of defence or a counter-claim was a punitive measure, which the respondents had already suffered and that therefore, they cannot be hauled up for contempt. The seriousness of such consequences under Order XXXIX Rule 11 of the Code of Civil Procedure, 1908 (CPC) (Maharashtra Gazette), was noted by this Court in the cases of **Rajesh H. Parikh vs. Deepika R. Parikh** (*supra*) and **Shardul Shamprasad Dev vs. Manjiri Shardul Dev and others** (*supra*).

30. It was further submitted that in any case, the respondent No.4 could not be hauled up for contempt under the provisions of the Contempt of Courts Act, simply for the reason that he did not fit into the definition of director, manager, secretary or officer of respondent No.1-company. Since he was merely a consultant and payments made to him were clearly explained as reimbursements, he could not be said to be in-charge of the respondent No.1-company.

31. The learned senior counsel for the respondents submitted that in such circumstances, the drastic power of punishing the respondents for contempt may not be exercised by this Court, particularly when the petitioner has failed to make out such a case under the provisions of the Contempt of Courts Act and the law laid down in that context. He prayed for dismissal of the contempt petition.

32. In the light of the rival submissions, the issues arising in the present contempt petition concern the maintainability of the petition under the provisions of the Contempt of Courts Act, particularly Section 12(5) thereof; whether there was willful disobedience of the order of this court on the part of the respondents; whether the order of which the contempt is alleged, was a self-operating order, providing for an adverse consequence upon failure to abide by the direction, thereby obviating the necessity to invoke contempt jurisdiction; whether the respondent No.4 can be hauled up for contempt in the facts and circumstances of the present case and whether respondent No.1-company can be proceeded against, in the face of the fact that upon admission of the contempt petition, notice could not be physically served on the respondent No.1-company.

33. Since the issue pertaining to the frame of the contempt petition being allegedly defective in the context of invocation of Section 12(5) of the Contempt of Courts Act, goes to the very root of the matter, it would be appropriate to first consider the said issue.

34. In this context, much emphasis was placed on behalf of the respondents, on the contents of the contempt petition and the manner in which the provisions of the Contempt of Courts Act were invoked. It was emphasized that the petitioner, in the prayer clause, had invoked provisions of only the Contempt of Courts Act against the respondents, particularly respondent Nos.2 to 4 for having willfully disobeyed the direction of this Court. The respondents have specifically taken a stand that since the present case does not concern breach of an undertaking given to this Court, Section 12(5) of the Contempt of Courts Act cannot be invoked against respondent Nos.2 to 4.

35. The aforesaid contention is raised by reading Sections 12(4) and 12(5) of the Contempt of Courts Act together. It is alleged that since Section 12(5) refers to Section 12(4) of the Contempt of Courts Act, it necessarily concerns the question of contempt, only in respect of an undertaking given on behalf of a company to a Court. In other words, a situation of violation of an order or direction of a Court by a company, would not be covered under Section 12(5) of the Contempt of Courts Act. On the other hand, the petitioner has emphasized on a holistic reading of the Contempt of Courts Act, in particular Sections 2(b) and 12 thereof.

36. In this context, it would be appropriate to refer to the relevant provisions of the Contempt of Courts Act, which read as follows:

“2. **Definitions.**—In this Act, unless the context otherwise requires,—

- (a) “contempt of court” means civil contempt or criminal contempt;
- (b) “civil contempt” means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;

12. **Punishment for contempt of court.**—

- (1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it *bona fide*.

- (2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.
- (3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.
- (4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

- (5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

- Explanation.*—For the purpose of sub-sections (4) and (5),-
- (a) “company” means any body corporate and includes a firm or other association of individuals; and
 - (b) “director”, in relation to a firm, means a partner in the firm.”

37. As noted hereinabove, the petitioner has emphasized upon the fact that the contempt petition in the present case, also invokes Article 215 of the Constitution of India. According to the respondents, mere reference to the said Article in the title of the petition is not enough since the contempt petition invokes only the provisions of the Contempt of Courts Act, as is evident from the prayers made in the petition.

38. This Court is of the opinion that substance has to be emphasized over form and when the said principle is applied to the facts of the present case, particularly the alleged willful disobedience on the part of the respondents highlighted in the contempt petition, it is found that in substance, the contempt petition is a petition filed under the provisions of the Contempt of Courts Act read with Article 215 of the Constitution of India. Being a court of record, this Court has the power to punish for its contempt.

39. Rival submissions were made on the question as to whether upon enactment of the Contempt of Courts Act, the power of this Court is curbed in any manner to punish for its contempt under Article 215 of the Constitution of India, particularly in the light of the judgment of the Supreme court in the case of **Pallav Sheth vs. Custodian and others** (*supra*). A proper reading of the said judgment of the Supreme Court and the subsequent judgment in the case of **Vijay Kurle, In Re and others** (*supra*), would show that the Supreme Court, in the case of **Pallav Sheth vs. Custodian and others** (*supra*) was only dealing with the question as to

whether contempt action can be initiated after the period prescribed in the Contempt of Courts Act, has expired. In fact, in the aforesaid subsequent judgment, in the case of **Vijay Kurle, In Re and others** (*supra*), the Supreme Court clarified that the observations made in **Pallav Sheth vs. Custodian and others** (*supra*) had to be read in that context only. Thus, this Court is considering the present contempt petition, under the provisions of the Contempt of Courts Act as well as Article 215 of the Constitution of India.

40. Nonetheless, it is necessary to deal with the specific contention raised on behalf of the rival parties in the context of Section 12(5) of the Contempt of Courts Act. A perusal of Section 12(4) of the Contempt of Courts Act shows that where a company is found guilty of contempt of Court in respect of any undertaking given to a Court, every person in-charge of and responsible to the company for the conduct of its business, at the time when the contempt was committed, is deemed to be guilty of contempt and punishment can be enforced. Section 12(5) of the Contempt of Courts Act starts with a *non-obstante* clause, which uses the words “Notwithstanding anything contained in sub-section 4”. Thereupon, it provides that where the contempt of Court referred to “therein” is committed by a company and it is proved that the same was committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such persons shall be deemed to be guilty of the contempt and punishment can be enforced. Explanation to sub-section (5) of Section 12 of the Contempt of Courts Act defines the terms “company” and “director”.

41. The respondents are reading sub-sections (4) and (5) of Section 12 of the Contempt of Courts Act in isolation and divorced from the other

provisions thereof. A perusal of Section 12(3) of the Contempt of Courts Act shows that it pertains to “civil contempt”. Section 2(b) defines civil contempt as willful disobedience to any judgment, decree, direction or order of a Court “or” willful breach of an undertaking given to a Court. Thus, civil contempt has two aspects, one being the willful disobedience of an order or direction of a Court and the second being willful breach of an undertaking given to a Court. This Court is of the opinion that sub-sections (3), (4) and (5) of Section 12 of the Contempt of Courts Act have to be read in the context of the definition of “civil contempt” under Section 2(b) thereof. If the manner in which the respondents are reading Sections 12(4) and 12(5) of the Contempt of Courts Act, is accepted, it would lead to an anomalous and absurd situation, where persons in-charge of or responsible to a company and a director, manager, secretary or other officer of the company could be punished for contempt, only if the company is guilty of contempt for breach of an undertaking given to a Court. But, they cannot be punished for contempt if the company willfully disobeys an order or direction of the Court. In other words, even if the company commits civil contempt as defined in Section 2(b) of the Contempt of Courts Act, by willfully disobeying an order or direction of the Court, its directors, managers, secretaries or other officers cannot be punished for contempt of Court. This demonstrates the anomaly in the contention raised on behalf of the respondents.

42. In this context, the opening words of sub-section (5) of Section 12 of the Contempt of Courts Act assume significance i.e. “Notwithstanding anything contained in sub-section (4)”. This is for the reason that sub-section (4) of Section 12 pertains only to one aspect of civil contempt defined in Section 2(b) of the Contempt of Courts Act i.e. willful breach of

an undertaking given to a Court. The *non-obstante* clause in sub-section (5) of Section 12 of the Contempt of Courts Act, at the very opening, has to be read to mean that the said sub-section deals with the aspect of civil contempt as defined in Section 2(b), with which sub-section (4) of Section 12 is not concerned, viz. willful disobedience of an order or direction of the Court. The words used in sub-section (5) of Section 12 of the Contempt of Courts Act “where the contempt of Court referred to therein” must necessarily mean civil contempt committed by a company. Reading sub-section (5) of Section 12 in any other manner and divorced from Section 2(b) as also other provisions of the Contempt of Courts Act, would lead to absurd results, which are sought to be canvassed on behalf of the respondents. The same cannot be accepted and hence, the contentions raised on behalf of the respondents in that regard are rejected.

43. This Court finds that under the provisions of the Contempt of Courts Act, particularly Section 2(b) read with Section 12(5) thereof, persons who are directors, managers, etc. of a company can certainly be punished when the company willfully disobeys a judgment, decree or direction of the Court. Even otherwise, this Court finds that in the present case, the petitioner has invoked Article 215 of the Constitution of India alongwith the provisions of the Contempt of Courts Act and hence, this Court can certainly go into the question on merits as to whether the respondents have committed contempt of this Court and in that context, whether respondent Nos.2 to 4 are liable to be punished. Hence, the rival submissions will have to be analyzed on the question of alleged willful disobedience by the respondents with regard to the direction issued by this Court.

44. In order to render findings on the said aspect of the matter, it would be necessary to refer to the relevant portion of the order dated 17.02.2020, which contains the direction in respect of which the petitioner claims that civil contempt is committed by the respondents. The relevant portion of the said order reads as follows:

- “9. This has never been the Respondent's case at any time. It is actually impossible to accept this at a prima facie stage. There may be some other disputes that require to be taken into arbitration and therefore the only order that needs to be made is to secure the Petitioner in as neutral a fashion as possible in the amount of hire charges for half of November 2019, and for the months of December 2019, January 2020 and February 2020. There cannot be a direction to make this payment to petitioner but there can be a direction that the amount should be deposited in this Court. The aggregate amount comes to Rs 1,21,80,000/-.
10. Mr Jagtiani makes a statement that as on the date of Affidavit of Disclosure, there is sufficient balance in the Respondent's bank account to cover this deposit and he seeks an order freezing this bank account. The submission is rejected.
11. The amount is to be deposited within four weeks from today.
12. It is made clear that the respondents right to file a statement of defence or a counter claim is expressly conditional upon this deposit being made. Upon deposit, that amount is to be invested in accordance with the usual practices of the office of the Prothonotary and Senior Master initially for a period of one year or as such period approximating one year as would fetch an optimal rate of return.”

45. A perusal of the above-quoted portion of the said order clearly shows that a positive direction was issued to the respondent No.1 to deposit

amount of Rs.1,21,80,000/- in this Court within four weeks from the date of order. It is relevant to note that this Court further clarified that the right of the respondents to file a statement of defence or a counter-claim in the arbitral proceedings, was expressly conditional upon such deposit being made. There is no dispute about the fact that the respondent No.1 failed to deposit the aforesaid amount within the stipulated period of time, which expired on 16.03.2020. The fact of disobedience of the said order is clearly established. But, for the respondents to be hauled up for contempt, such disobedience must be found to be “willful”.

46. The petitioner has emphasized on the material available on record, which is not seriously disputed by the respondents that amounts were disbursed from the bank accounts of the respondent No.1-company on various dates and yet, the direction for depositing the aforesaid amount within the stipulated period of time, was not obeyed.

47. In the light of the material placed on record, including statement of bank accounts of respondent No.1, the petitioner alleged that from 28.01.2020 till 06.07.2020, the respondent No.1 disbursed amounts under various heads, while refusing to obey the aforementioned direction for depositing specific amount within the stipulated period of time, issued in the order dated 17.02.2020 passed by this Court. This Court finds that from the material on record, the following amounts were disbursed:

- INR 40,62,919/- towards employee salaries and full and final settlement till end of February 2020.
- INR 16,38,054/- towards tax.
- INR 9,41,869/- towards admin expenses.

- INR18,97,794/- towards operational expenses.
- INR 17,87,705/- towards legal expenses.
- INR 7,62,160/- towards security.
- INR 13,41,842/- towards IT expenses.
- INR 8,31,565/- towards consultant expenses.

48. These amounts were disbursed even after the period of four weeks expired on 16.03.2020 and therefore, the petitioner alleges that while the respondents were disbursing such amounts, no respect or regard was shown to the specific direction of this Court in the order dated 17.02.2020. Although initially, it was alleged that amounts were siphoned off in such manner by the respondent No.1 without showing any regard for the positive direction issued by this Court, during the course of arguments, the submission was modulated on behalf of the petitioner, to contend that the respondent No.1 gave priority to such sundry payments over its obligation to abide by the positive direction given by this Court. According to the petitioner, by acting in such a manner, the respondents had willfully disobeyed the order dated 17.02.2020 and having shown scant regard for the majesty of this Court, they deserve to be punished for contempt.

49. This Court finds that during the course of arguments, it was accepted on behalf of the petitioner that amounts paid towards salaries of employees and towards full and final settlement of their dues as also payment made towards tax and administrative expenses could be said to be legitimate expenses/payments. This Court finds that the other heads of disbursements noted hereinabove, pertain to operational expenses, security, IT expenses, legal expenses and expenses towards consultants. These amounts are less as compared to the expenses accepted as legitimate. It is the case of respondent

Nos.2 to 4 that the business of respondent No.1 came to a standstill and it was closed sometime in February 2020. The said respondents have specifically stated that the very physical presence of respondent No.1 could no longer continue, in the face of the financial crunch faced by the said respondent. In these proceedings, this Court is not going into the question as to who was responsible for such a state of affairs. The respondents have made allegations against promoters/directors/controller of the parent company of the petitioner, as being squarely responsible for the said state of affairs. But, this Court, in the present proceedings, refrains from making any comment with regard to the same.

50. Nonetheless, the petitioner has not been able to deny the fact that respondent No.1-company closed down its business and operations in February 2020. This is also reflected from the major amount that had to be disbursed by the respondent No.1-company towards salaries of employees and their full and final settlement by the end of February 2020. The respondent Nos.2 to 4 have also specifically stated that the expected third-party recoveries of respondent No.1 did not materialize due to the Covid-19 pandemic and ensuing lockdowns. It is undisputed that the Covid-19 pandemic hit the globe and also this country in March 2020 and its effect continued for about two years. The closing down of business of respondent No.1 and onset of Covid-19 pandemic and ensuing lockdowns, are relevant factors to be considered regarding the question as to whether, in the facts and circumstances of the present case, it can be said that the respondents willfully disobeyed the direction of this Court. This Court also cannot be oblivious of the fact that on 30.11.2020, the learned arbitrator disposed of an application filed under Section 17 of the Arbitration Act, attaching all the assets, properties, receivables and bank accounts of respondent no.1. The

directors, authorized signatories and officers of respondent No.1 i.e. respondent Nos.2 to 4 herein, were restrained from creating any third-party rights and interests in the assets, properties and receivables of respondent No.1. This interim direction was continued post the arbitral award passed against the respondents.

51. It was indicated on the part of the petitioner that the respondents never made any efforts to apprise this Court of any factors or possible explanation for disobeying the positive direction of this Court. According to the petitioner, the aforesaid conduct further indicated the casual manner in which the respondents took the present contempt proceedings, particularly when the proceedings were initiated on 17.03.2020 itself. This Court is of the opinion that the respondents could have apprised this Court of the difficulties being faced in abiding by the positive direction issued in the order dated 17.0.2020. It is a matter of record that no such effort was made on behalf of the respondents. But, can the respondents be punished for contempt, for the reason that they failed to approach this Court to seek extension of time or for placing such factors on record? The answer has to be in the negative.

52. In this context, the judgments relied upon by the learned senior counsel appearing for the petitioner, need to be considered. In the case of **Reliance Communications Limited and others vs. State Bank of India and others** (*supra*), the Supreme Court found as a matter of fact, that the alleged contemnor therein had repeatedly breached the undertakings given to the Court and that unfair advantage was taken of indulgence shown by the Court from time to time. The Supreme Court found that statements made on oath by the contemnor were false to the knowledge of the contemnor and that

this factor clearly affected the administration of justice, thereby justifying an order of punishing the contemnor. But, in the present case, the allegation against the respondents is about their failure in depositing specific amount within the stipulated period of time. In the facts of the present case, it cannot even be alleged that the respondents appeared before this Court, gave undertakings and/or false information, thereby obstructing the administration of justice. There is no doubt that the respondents did not or could not obey the direction of depositing the amount, given in the order dated 17.02.2020. But, the material on record falls short of showing willful disobedience or deliberate violation of the direction issued by this Court.

53. In the case of **Urban Infrastructure Real Estate Fund vs. Dharmesh S. Jain and another** (*supra*), the Supreme Court found that the respondents therein had avoided execution of an award by initiating one proceeding after the other and that they sought several extensions from the Court for complying with the directions, with no intention to comply with the same. Repeated indulgence shown by the Supreme Court was misused and the defence of financial constraint of the respondents in the said case, was found to be an after-thought. But, in the instant case, the material on record, including emails and communications exchanged between the petitioner and respondent No.1 show that contemporaneous material is available to indicate the financial crunch faced by the respondent No.1 at the relevant time. The petitioner has not been able to dispute that respondent No.1 had to close down its business in February 2020 and that it could no longer have any employees on its roll, much less any infrastructure or presence.

54. In the case of **HSBC PI Holdings (Mauritius) Limited vs. Pradeep Shantipershad Jain and others** (*supra*), the Supreme Court found that the

allegation of siphoning off of funds was made out by the material on record and it was further held that the contemnors therein had failed to abide by the orders of the Court, despite several opportunities and extensions of time. In the present case, this Court has found hereinabove that the allegation of siphoning off of funds with an intention to willfully disobey the order of this Court, is not made out by the material on record. The respondent No.1 was required to make payments to employees for settlement of their dues fully and finally, in the light of the business being closed down and part of the amount was paid towards tax liability. The facts of the present case are clearly distinguishable.

55. In the case of **Rashtriya Mill Mazdoor Sangh vs. M/s. Khatau Makanji Spg. & Wvg. Co. Ltd. and others** (*supra*), this Court was constrained to initiate *suo motu* contempt proceedings in the light of its orders being violated. This Court, as a matter of fact, found that the directors of respondent No.1-company were passing the buck onto each other, while the salaries of the workers were not being paid. But, as noted hereinabove, the facts of the present case are distinguishable and hence, reliance placed on behalf of the petitioner on the said judgment, cannot take its case much further.

56. In all the cases where the Supreme Court or this Court held the contemnors liable for punishment, findings on facts were rendered as to the manner in which the contemnors either willfully disobeyed the orders of the Court or they willfully breached the undertakings given to the Court. It is important that the Court, in such cases, found on facts, that the disobedience of the order of the Court or breach of an undertaking given to the Court was “willful”. In the facts of the present case, this Court is unable to reach such a

finding and therefore, the contentions raised on behalf of the petitioner on this aspect of the matter, cannot be accepted.

57. This leads to the next issue, which also appears to be intertwined with the earlier issue regarding disobedience of the direction of this Court. It pertains to the contentions raised by the rival parties on the aspect of self-operating nature of the order dated 17.02.2020, as an adverse consequence against the respondent No.1 is inbuilt in the very same order, thereby indicating that the respondents cannot be hauled up for contempt of Court. In order to appreciate the said contention, it would be necessary to peruse the relevant portion of the order dated 17.02.2020 quoted hereinabove, particularly paragraph Nos.11 and 12 thereof. In paragraph No.11 of the said order, this Court directed the respondent No.1 to deposit the amount of Rs.1,21,80,000/- within four weeks from the date of the order. Relevant portion of paragraph No.12 states "It is made clear that the respondents right to file a statement of defence or a counter-claim is expressly conditional upon this deposit being made". Thus, it becomes absolutely clear that upon failure to deposit the aforesaid specific amount within four weeks of the order dated 17.02.2020, the right of the respondents to file statement of defence or counter-claim, was taken away. This is clearly an adverse consequence visited upon the respondents.

58. The question is, whether it can be said to be a self-operating clause and a consequence inbuilt within the said order. This Court is of the opinion that the moment the period of four weeks from the order dated 17.02.2020, expired and respondent No.1 failed to deposit the amount of Rs.1,21,80,000/- in this Court, the right of the said respondent to file its statement of defence or counter-claim, was taken away. Once this conclusion

is reached, there can be no other finding but to hold that paragraph Nos.11 and 12 of the order dated 17.02.2020 passed by this Court, read together, contain a self-operating clause. Such a self-operating mechanism visited the respondents with the adverse consequence of taking away their right to file statement of defence or counter-claim in the arbitral proceedings. It can be said that this Court stipulated a specific adverse self-operating consequence on the respondents, upon their failure to deposit the specific amount within the stipulated period of time.

59. It is an admitted position that such an adverse self-operating consequence did result in the respondents being deprived of filing statement of defence or counter-claim in the arbitral proceedings, ultimately leading to the final arbitral award, under which the respondent No.1 is ordered to pay the aforesaid sum of Rs.1,21,80,000/- alongwith interest @ 7.4% p.a. to the petitioner till final realization of the amount. Apart from this, the respondent No.1 is also ordered to pay a sum of Rs.19,17,528/- towards interest to the petitioner as also an amount of Rs.14,24,126/- towards costs. It is also an admitted position that the said award is being executed by the petitioner against the respondents before this Court, in an independent proceeding.

60. This Court is of the opinion that in the face of the said self-operating clause, providing for adverse consequence upon the respondents, due to their failure to deposit specific amount in stipulated period of time, such an order cannot become the basis for initiating contempt proceedings. It was specifically submitted on behalf of the petitioner that such an adverse consequence was provided in the order to indicate the seriousness of the positive direction issued by this Court and that such a clause cannot be used

as an escape route by the respondents, who have themselves blatantly violated the positive direction. The said contention raised on behalf of the petitioner will have to be rejected, for the reason that this Court found it appropriate to provide for the said adverse consequence, in case of failure to deposit the amount. The said clause incorporated in paragraph No.12 of the order dated 17.02.2020, in the form of a clarification, indicates that this Court can be said to have foreseen the possibility of the respondent No.1 failing to abide by the direction of depositing the amount. In such a situation, the respondents having suffered the serious consequence of being deprived of filing their statement of defence or counter-claim in the arbitral proceedings, are already facing execution of the arbitral award, partly due to their failure to deposit the amount within the stipulated period of time.

61. In this context, the judgments referred to and relied upon on behalf of the respondents, in the cases of **Narain Singh vs. Lala Rajendra Lal and others** (*supra*), **Mahesh Govardhan Khilnani vs. Ms. Ritika** (*supra*), **Nirmal Urban Co-operative Bank Ltd. vs. Mamta Keneddy Naidu** (*supra*) and **Indian Overseas Bank vs. Lalit Kumar Aggarwal and another** (*supra*), can be distinguished on facts, but in the facts of the present case, this Court finds that the self-operating clause has to be taken into consideration, to hold that the respondents cannot be hauled up for contempt. In the said cases, the Court was concerned with conditional stay orders or clauses of consent terms, where parties had given undertakings to each other. Such may not be the facts of the present case, but the nature of the self-operating clause in the order dated 17.02.2020, cannot be ignored, while considering the present proceedings.

62. The learned senior counsel for the parties also referred to and commented upon judgments in the cases of **Rajesh H. Parikh vs. Deepika R. Parikh** (*supra*) and **Shardul Shamprasad Dev vs. Manjiri Shardul Dev and others** (*supra*). The said judgments indicate that a power, like the power under Order XXXIX Rule 11 of the Code of Civil Procedure, 1908 (CPC) (Maharashtra Gazette) of striking off the defence of a party, has to be exercised with caution. The respondents contend on the basis of the said judgments that the consequence of such power being exercised, is drastic and in a manner of speaking, punitive in nature. This Court is of the opinion that the said judgments only indicate that such a power has to be exercised with caution. In the present case, this Court provided for such an adverse consequence in paragraph No.12 of the order dated 17.02.2020, which indicates that such self-operating adverse consequence was engrafted, so that the failure of respondent No.1 to deposit specific amount within stipulated period of time, would not be left without any consequence.

63. The learned senior counsel for the parties also submitted with regard to the liability or otherwise of respondent No.4 to be hauled up for contempt. This was on the basis that according to the petitioner, the respondent No.4 was also in-charge of affairs of respondent No.1. But, it was contended on behalf of the respondents that he was merely an authorized signatory. Since this Court has rendered findings hereinabove to the effect that the respondents cannot be punished for contempt in the facts and circumstances of the present case, no opinion is necessary on the said aspect of the matter.

64. As regards the question as to whether the respondent No.1 could be proceeded against, despite the fact that after admission of the contempt petition, the notice issued to respondent No.1 returned back with the remark

‘left’, this Court finds that the position of law is amply clarified by the judgments in the cases of **Medi Carriers Pvt. Ltd. vs. Frontiango Life-sciences Pvt. Ltd.** (*supra*), **Sanghvi Movers Limited vs. Delta Infra Limited** (*supra*) and **State Trading Corporation of India Limited vs. Shalimar Rexine India Limited** (*supra*). It is undisputed that the address of the respondent No.1-company on which the notice was attempted to be served, is the same as the address of the respondent No.1-company in the record of the Registrar of Companies. Hence, it has to be treated that the respondent No.1-company was duly served with the notice and therefore, the present contempt petition was considered as against respondent No.1-company also.

65. But, since on the merits of the matter, this Court has found in favour of the respondents, the aspect of service of notice on respondent No.1-company, pales into insignificance.

66. This Court is of the opinion that ultimately, in contempt jurisdiction, it is a matter between the Court and the alleged contemnors. The role of the petitioner is more in the nature of bringing to the notice of the Court facts and circumstances, which may give rise to this Court exercising its power to punish for its contempt, under provisions of the Contempt of Courts Act read with Article 215 of the Constitution of India. In the present case, the petitioner showed alacrity and promptitude by filing the present contempt petition on 17.03.2020 i.e. immediately one day after the stipulated period of four weeks expired on 16.03.2020. The contempt petition was admitted. It was taken up for final hearing and elaborate arguments made on behalf of the parties, were heard and considered. Having considered the material on record, this Court has reached the conclusion that while the fact that the respondents could not obey the order dated 17.02.2020, is made out, “willful disobedience” on their part is not established.

67. This Court has specifically taken into consideration the contemporaneous documents, showing the financial crunch suffered by the respondent No.1-company at the relevant time. The business of respondent No.1-company was closed down some time in February 2020. The impact of Covid-19 pandemic, which struck in March 2020 and the ensuing lockdowns, are also taken into consideration by this Court to reach the conclusion that “willful disobedience” of the respondents is not made out. This has to be appreciated in the light of the self-operating clause in paragraph No.12 of the order dated 17.02.2020, which provided for the drastic consequence of the respondents being deprived of filing their statement of defence or counter-claim in the arbitral proceedings. It is undisputed that the respondents could not place their statement of defence in the arbitral proceedings and as on today, they are facing execution proceedings concerning the arbitral award before this Court.

68. In such circumstances, this Court is not inclined to hold that the respondents committed willful disobedience of the order of this Court, amounting to civil contempt, as defined in Section 2(b) of the Contempt of Courts Act.

69. Accordingly, the contempt petition is dismissed. In view of dismissal of the petition, all pending applications stand disposed of.

(MANISH PITALE, J)