IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 22.04.2024

Orders Pronounced on : 19.07.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Contempt Petition No.625 of 2021

M/s.The Waterbase Limited,
A company registered under the
Companies Act, 1956
and having registered office at
Ananthapuram Village, Thotapalli,
Gudur Mandal, Nellore District-524 344
Represented by its Authorised Signatory Mr.P.Balaji
also at
Thapar House, No.37, Montieth Road,
Egmore, Chennai-600 008. .. Petitioner

Vs.

1. Mr.Rohan Daniel Mukherjee,
Partner, M/s.Rising Tide,
Represented by its Partner,
Having office at
8/1 H, Diamond Harbour Road,
Kolkatta-700 027.

2. Mr.Arnab Daniel Mukherjee,
Partner, M/s.Rising Tide,
8/1 H, Diamond Harbour Road,
Kolkatta-700 027. .. Respondents

Contempt Petition filed under Section 11 of the Contempt of Courts Act, to punish the respondents for contempt and wilful disobedience of the order dated 31.07.2020 passed by this Court in Application No.9720 of 2019.

For petitioner : Mr.Anirudh Krishnan
For respondents: Mr.T.Sai Krishnan

ORDER

This Contempt Petition is filed to punish the respondents for contempt and wilful disobedience of the order dated 31.07.2020 passed by this Court in Application No.9720 of 2019.

2. This Contempt Petition has been filed stating as follows:

(a) The petitioner is a Company engaged in the business of manufacture and sale of shrimp/prawn feed and other allied products, such as Farm Care products, shrimp hatchery and shrimp processing and operates out of its factory in Nellore. The petitioner-Company is represented by its Authorised Signatory in Montieth Road, Egmore, Chennai.

(b) The first respondent is a partner of the firm constituted under the Indian Partnership Act and in terms of the partnership deed, dated 22.04.2023 and supplemental partnership deed, dated 08.01.2018, the second respondent is another partner of the first respondent and are responsible for day-to-day affairs and functioning of the first respondent-partnership firm.

(c) The petitioner and M/s.Rising Tide represented by first respondent No.1, the second respondent executed a dealership agreement dated 21.12.2018 and business term sheet dated 21.12.2018, whereby the petitioner was appointed by M/s.Rising Tide as its dealer to market, sell and distribute the shrimp/prawn feeds and related products marketed by the petitioner as per the provisions of the dealership agreement and business term sheet in West Bengal.

(d) As per the understanding between the parties to the dealership agreement and the business term sheet, the business term sheet governs the terms of the business between the petitioner and M/s.Rising Tide and the dealership agreement governs the general terms and conditions of the working arrangement between the petitioner and first respondent.

(e) In terms of the business term sheet, the first respondent and second respondent, in their capacity as Directors of Rising Tide Sea Foods Private Limited (guarantor) executed an unconditional and irrevocable corporate guarantee, dated 21.12.2018 for a sum not exceeding Rs.6 crores (corporate guarantee) in favour of the petitioner.

(f) Till February 2019, M/s.Rising Tide made payments against the invoices raised by the petitioner as per the dealership agreement, but, post March 2019, M/s.Rising Tide started defaulting in making payments against the invoices raised by the petitioner and failed to honour their obligations under the dealership agreement. However, based on the personal assurances given by the first respondent and second respondent to the petitioner, undertaking to clear the outstanding dues, the petitioner continued to provide goods to M/s.Rising Tide till June 2019, despite which, M/s.Rising Tide failed to clear the outstanding payments due to the petitioner.

(g) M/s.Rising Tide owed an outstanding amount of Rs.5,22,03,344/- to the petitioner as on November 2019, which was due towards the principal amount for the goods delivered by the petitioner from March 2019 to June 2019 (invoices raised from 29.03.2019 to 29.06.2019). This is evident from the balance confirmation submitted by M/s.Rising Tide for the month of August 2019 and September 2019 towards shrimp feed and farm care products which reflects that an outstanding amount of Rs.5,22,03,344/- is due and payable by the respondents to the petitioner.

(h) Owing to non-payment of outstanding dues by M/s.Rising Tide and since the petitioner was not interested in granting any further extensions to the respondents/contemnors, the petitioner invoked the Corporate Guarantee by issuing a notice of invocation, dated 23.11.2019 demanding payment of Rs.5,22,03,344/- towards principal amount and Rs.28,47,008/- towards interest component, calculated at 21% per annum as on 16.11.2019.

(i) While the petitioner was taking steps towards invoking the Corporate

Guarantee, M/s.Rising Tide remitted Rs.3,00,000/- to the petitioner on 21.11.2019 and on 04.12.2019, remitted another amount of Rs.5,00,000/-. However, no response was received to the notice of invocation of corporate guarantee dated 23.11.2019, which prompted the petitioner to look up the records of Rising Tide Sea Foods Private Limited on the web-site of the Ministry of Corporate Affairs. The petitioner found that Rising Tide Sea Foods Private Limited, i.e. the guarantor had been struck-off by the Registrar of Companies, Kolkata and it was at this stage that the petitioner realised that the respondents/contemnor had played a fraud upon the petitioner, and had no intention to pay the petitioner for the goods supplied by it and were in fact deliberately with-holding payments due to the petitioner.

(j) In the above background, the petitioner filed an application under Section 9 of the Arbitration and Conciliation Act, 1996, bearing number as O.A.No.1136 of 2019 before this Court (having jurisdiction as per Clause 54 of the dealership agreement) and also praying or directions to be issued to respondents to deposit the outstanding amount of Rs,5,14,03,344/- towards admitted principal amount and a further amount of Rs.28,47,008/- towards interest calculated @ 21% per annum (as on 16.11.2019) with this Court in the form of a Bank Guarantee in favour of the petitioner.

(k) The respondents/contemnors opposed the said application stating that the dealership agreement, business term sheet and the corporate guarantee were allegedly forged without being able to rebut the documents adduced by the petitioner, including e-mail communications that took place in the above context, the cheques deposited with the petitioner and the balance confirmations dated 30.08.2019 and 30.09.2019.

(l) On being surprised by the statements of the respondents/contemnors, the petitioner was constrained to issue notice under Section 21 of the Act invoking arbitration as per Clause 54 of the dealership agreement. The petitioner accordingly invoked arbitration, vide notice of invocation, dated 22.02.2020 and suggested appointment of Honourable Mr.Justice S.Rajeswaran (retd) as the sole arbitrator for adjudication of the arbitral disputes between the parties arising out of the dealership agreement while seeking the respondents/contemnors consent on the same. The petitioner also traced the assets of the respondents/contemnors in the process of which the petitioner came to know that the respondents 2 and 3, in their capacity as partners of the first respondent, held shares in the company by the name of Matara Aquaculture West Bengal Private Limited, which were not disclosed by the respondents/contemnors before this Court. Hence, the petitioner filed a fresh application under Section 9 of the Act, i.e. O.A.No.138 of 2020 disclosing the details of the said shares held by respondent Nos.2 and 3 in Matara Aquaculture and sought injunction restraining the respondents/contemnors from alienating the same, since there was no security against the outstanding dues admittedly payable by the respondents/contemnors.

(m) The said O.A.No.138 of 2020 was listed before this Court on 03.03.2020 along with previous O.A.No.1136 of 2019, when this Court granted injunction restraining the respondents/contemnors from alienating the shares held by them in Matara Aquaculture West Bengal Private Limited till the next date of hearing i.e. 05.03.2020. In the meantime, the respondents/contemnors, vide their response dated 26.02.2020 to the notice of invocation, dated 22.02.2020, again denied the existence of the dealership agreement, the business term sheet and the corporate guarantee and refused to give consent for appointment of an Arbitrator and failed to act as per the procedures agreed under the dealership agreement.

(n) In view of Covid-19 Pandemic, O.A.No.1136 of 2019 and O.A.No.138 of 2020, which were scheduled for final hearing on 31.03.2020, were taken up only on 13.07.2020, whereby, this Court again granted the respondents/contemnors an opportunity to file their counter affidavit in O.A.No.138 of 2020 before 31.07.2020 and accordingly, extended the interim order as passed on 03.03.2020 till 31.07.2020. This Court also directed the respondents/contemnors to furnish the details of the assets held by them as directed in the order dated 03.01.2020. Accordingly, the respondents/contemnors filed the affidavits on 30.07.2020, i.e. (i) counter affidavit to O.A.No.138 of 2020, (ii)Affidavit disclosing the assets of M/s.Rising Tide; (iii)Affidavit disclosing the assets of the first respondent; and (iv)affidavit disclosing the assets of the second respondent, wherein the respondents/contemnors again reiterated the denial regarding the execution/existence of the dealership agreement, the business term sheet and the corporate guarantee. The said O.A.No.1136 of 2019 and O.A.No.138 of 2020 came up for hearing on 31.07.2020, whereby this Court, after hearing detailed submissions by the parties, disposed of the said applications in favour of the petitioner with the following directions:

(i) directing the respondents to furnish a Bank Guarantee of a sum of Rs.5,14,03,344/- in favour of the petitioner within a period of two months;

(ii) granted the petitioner the liberty to file an affidavit before the Court in the event any assets of the respondents that were not disclosed by the respondents themselves in the affidavits submitted by them before the Court are discovered by the petitioner;

(iii) granted the petitioner the liberty to file necessary application under Section 11 of the Act seeking appointment of Arbitrator.

(o) After passing of the judgment under Section 9, the petitioner filed application under Section 11 of the Act in O.P.No.441 of 2020 before this Court seeking appointment of an Arbitrator, in view of the stand taken by the respondents in their response to the notice of invocation, dated 22.02.2020. The arguments in O.P.No.441 of 2020 were also concluded and order stood reserved as on 03.03.2021. As per Section 9 order, the time line of two months within which the respondents/contemnors were to furnish the Bank Guarantee of Rs.5,14,03,344/- was to be calculated from the date when the same was received by the respondents/contemnors and Section 9 order is deemed to have been received by the respondents on the date when the same was uploaded on the web-site of the High Court.

(p) The petitioner also issued private notice to the respondents/contemnors on 16.09.2020 along with a copy of the final order, calling upon them to comply with the directions. Even assuming that the judgment-debtors received the copy of the order passed under Section 9, for the first time, on 16.09.2020, the respondents/contemnors failed to furnish the Bank Guarantee within a period of two months, i.e. by 16.11.2020.

(q) The respondents/contemnors preferred appeal against the order passed under Section 9, in O.S.A.No.240 of 2020, which was disposed of by a Division Bench of this Court on 15.02.2021, without interfering with the order passed under Section 9 and observing that the ground of maintainability and existence of arbitration agreement could be decided in the other proceedings, i.e. O.P.No.441 of 2020, and the said OSA was disposed of at the request and with the consent of the respondents/contemnors, from which it is evident that the respondents/contemnors do not have any grievance against the order passed under Section 9. The relevant portion of the judgment dated 15.02.2021 passed in OSA.No.240 of 2020, is as under:

> "4. Since the appellants herein require the primary ground raised to be left for adjudication in course of the proceedings under Section 11 of the Act or, upon a prima facie view taken therein and the matter being left for assessment before the arbitrator, the present appeal may be disposed of without going into such legal issue. In the light of such legal issue not being addressed at this stage, the propriety of the order impugned has not been gone into. This is at the invitation of the appellants herein."

Thus, the order dated 31.07.2020 in O.A.Nos.1136 of 2019 and 138 of 2020 passed by the learned Single Judge remains in force and binding upon the respondents/contemnors.

(r) The petitioner again issued private notice on 22.02.2021 giving the respondents/contemnors a final opportunity to comply with Section 9 order and furnish a Bank Guarantee of Rs.5,14,03,344/- in favour of the petitioner within one week from the date of the letter, i.e. by 04.03.2021. This was also failed to be furnished till date. The over-all conduct of the respondents/contemnors including during the proceedings before this Court, shows their mala-fide intention to evade payment of outstanding dues, admittedly payable to the petitioner under the dealership agreement.

(s) Hence, from the above, it is clear that the respondents/contemnors have deliberately and wilfully disobeyed the direction of this Court issued vide order passed under Section 9 fo the Act and further failed to show any inclination to comply with the direction issued in the said order under Section 9. Despite the private notice dated 16.09.2020 pursuant to Section 9 order, the disposal of the said OSA and the subsequent private notice dated 22.02.2021 issued pursuant thereto, the respondents/contemnors have wilfully refrained from furnishing the Bank Guarantee of Rs.5,14,03,344/-. Hence, for the above reasons, the petitioner has filed this Contempt Petition.

3. The petitioner-Company has filed additional affidavit stating as follows:

(i) During the pendency of the contempt proceedings, the respondents filed an affidavit, dated 19.08.2021 in the present Contempt Petition, wherein the respondents categorically stated under paragraph 6 that, "we did not have either the means or capacity to furnish bank guarantee for the amount mentioned in the said application as such whatever the credit worthiness was already utilized and we did not have any other assets which was sufficient to provide as a collateral to the bank for furnishing such bank guarantee."

(ii) The respondents, during the pendency of the above contempt proceedings, on 24.08.2021, i.e. five days after deposing an affidavit, dated 19.08.2021 before this Court that they do not have wherewithal to comply with the order of this Court, made an outright purchase of a flat ad-measuring about 3,000 Sq.Fts., by way of execution of sale deed dated 24.08.2021 in Kolkata in favour of the respondents herein for a sum of Rs.3.95 crores. On a perusal of the sale deed, it is clear that the respondents have made payment of sale consideration of Rs.3.95 crores to its vendor on 23.08.2021, out of which, a sum of Rs.3,51,05,000/- was paid through Demand Drafts drawn on by the Bank of Baroda. The petitioner brought to the knowledge of this Court, vide additional affidavit dated 30.10.2023, along with additional typed set of documents dated 01.11.2023 in the sub-application in the present contempt petition. The petitioner also pointed out that the respondents herein has encumbrance over the said property by availing loan from the Union Bank of India on 31.01.2022, which shows the fact that the respondents had purchased the said property by making full payment of the sale consideration of Rs.3.95 crores out of its own source. Subsequently, after a period of about five months, the respondents created a charge over the said property. Considering the said facts and that as the respondents are financially sound, the respondents can comply with the order of this Court, but however, they have chosen not to furnish the Bank Guarantee to the tune of Rs.5.14 crores and instead, purchased an immovable property worth about Rs.3.95 crores.

(iii) During the hearing in the present Contempt Petition on 04.03.2024, the respondents brought on record certain documents as 'typed set of papers filed by respondents' dated 03.03.2024 and these documents are brought to light for the first time in the present contempt proceedings, though the documents are dated 17.02.2021, 08.04.2021, 29.04.2021 and 05.05.2021 and the respondents had never chosen to produce the same at contemporaneous point of time. The petitioner therefore questions the authenticity of these documents filed by the respondents.

(iv) On an examination of the said documents, it is seen that the respondents approached their bankers for issuing Bank Guarantee for Rs.5.14 crores allegedly, vide letter dated 17.02.2021 and the same was refused by their Banker, as their limit was already under renewal by letter dated 08.04.2021, which is unsustainable and produced only to prejudice this Court. The Banks issue Bank Guarantee upon receipt of any deposits or security. That being so, the respondents cannot at this stage of proceedings, blame the Banks for not issuing Bank Guarantee, when it had itself not offered any security for the purpose of issuance of bank Guarantee to their Banker.

(v) The respondents, as an after-thought, are making a case as if the funds for purchase of the said property, were borrowed from one M/s.Matara Aquaculture West Bengal Private Limited ("Matara Aqua") for 'urgent assistance', vide their letter dated 29.04.2021. On due diligence carried out to know about the said Matara Aqua, it is seen that the respondents herein held majority shares (worth Rs.6 crores) in the said Matara Aqua until 01.04.2019 and subsequently, transferred their holding worth Rs.5,86,30,000/- (65.13% of the total holding in the Company) to one Mrs.Mary Ann Mukherjee (who is mother of the respondents herein). This clearly shows that the said Matara Aqua is closely related to the respondents herein.

(vi) Though the said transfer was effected on 01.04.2019, the same was subsequently updated with the Ministry of Corporate Affairs on 01.06.2021, which is clear from the MGT-7 Form filed by the said Matara Aqua for the years 2019-2020 on the web-portal of the Ministry of Corporate Affairs. The said transfer was effected on 01.06.2021, i.e., only pursuant to initiation of the present contempt proceedings before this Court on 26.03.2021.

(vii) Even assuming without admitting that the respondents had availed credit from the said Matara Aqua for purchase of the said property, they ought to have complied with the order passed by this Court with highest regards by sourcing the funds from the said Matara Aqua.

(viii) On a perusal of the Bank Statements of respondents herein at pages 7 and 8 of the typed set of papers filed by respondents, dated 03.03.2024, it is clear that on 23.08.2021, monies to the tune of Rs.1,26,50,000/- (Rs.56.50 lakhs and Rs.70 lakhs) had been transferred from 'Rising Tide' to the respondents. Similarly, on the same date, i.e. on 23.08.2021, another sum of Rs.1,30,00,000/- (Rs.50 lakhs and Rs.80 lakhs) has been transferred to the respondents from the said 'Rising Tide'. In total, a sum of Rs.2,56,50,000/- had been transferred to the respondents herein on 23.08.2021 from their own partnership firm, i.e. M/s.Rising Tide, for the purpose of purchase of the said immovable property. The said M/s.Rising Tide being the first respondent in the order passed under Section 9 of the Act, is under an obligation to comply with the said order by furnishing Bank Guarantee to the tune of Rs.5.14 crores. Having expressed its inability to comply with the said order before this Court, the respondents have routed funds from their partnership firm, i.e. M/s.Rising Tide, to their personal accounts to purchase the said immovable property.

(ix) The said Mrs.Mary Ann Mukherjee (mother of the respondents herein) had also transferred a total sum of Rs.1.01 crores to the respondents herein on 21.08.2021, 23.08.2021 and 20.09.2021 as evident from the Bank Statements of the respondents herein at pages 7 and 8 of the typed set of papers filed by the respondents, dated 03.03.2024 before this Court in the present Contempt Petition.

(x) Thus, the respondents, along with the said Matara Aqua and Mrs.Mary Ann Mukherjee, have diverted huge sum of monies and purchased the said immovable property on one hand and wilfully and intentionally avoided compliance of the directions issued by this Court from time to time on the other hand. The petitioner reserves their right to take appropriate action available in law for such acts of diverting funds by respondents along with the said Matara Aqua and Mrs.Mary Ann Mukherjee.

(xi) The mala-fide intention of the respondents to avoid compliance of the order under Section 9 of the Act, is prima-facie from the lackadaisical attitude that has been adopted by them before this Court in the present Contempt Petition. The respondents have also committed the offence of perjury by stating falsehood on the Affidavit, dated 19.08.2021 before this Court that they do not have wherewithal to comply with the order of this Court, but from the above facts, it remains otherwise.

(xii) Thus, the respondents may be granted the maximum punishment in the form of imprisonment along with fine for their repeated and intentional disobedience of the orders of this Court.

4. The respondents have filed counter affidavit, dated 19.08.2021 stating as under:

(a) The respondents have taken every step possible to comply with the direction of this Court, but it is due to lack of means that these respondents could not furnish the Bank Guarantee, as the Bankers refuse to support the respondents stating that the limits have already been reached and hence, inspite of the best efforts of the respondents, they were not in a position to furnish the Bank Guarantee, as the same is beyond their capacity and means. It is not at all intentional, but only due to the circumstances beyond the control of the respondents and adverse circumstances and it is not at all wilfull or wanton, thereby, the respondents apology.

(b) The petitioner herein had made application under Section 9 of the Arbitration and Conciliation Act, numbered as O.A.No.1136 of 2019 for injunction to retrain the respondents therein from alienating, encumbering or creating any third party interests in respect of any or all of their assets, both movable and immovable. The petitioner also filed A.No.9270 of 2019 to direct the respondents therein to furnish the Bank Guarantee for the sum mentioned therein. The final order passed in the above applications was challenged before the Division Bench of this Court, wherein the respondents herein and the appellant therein challenged the existence of the said arbitration agreement. The Division Bench of this Court had not addressed the issue as to the existence or efficacy of the arbitration agreement and kept the ground of maintainability in the other proceedings as mentioned in the said order. The respondents state that they do not have any other assets sufficient to provide a a collateral to the Bank for furnishing such Bank Guarantee.

(c) Despite several requests made on behalf of the respondents, the applicant did not produce the original copies of the set of documents including the alleged corporate guarantee. The alleged corporate guarantee was never executed by or on behalf of the respondents and hence, the question of invocation does not arise.

(d) There were several debit notes raised by the respondents against the damaged and faulty goods supplied by the petitioner, which were not taken into consideration while inferring the alleged amount mentioned therein.

(e) The respondents have not played any fraud on the petitioner and had intention to pay the petitioner for the goods supplied and they were not deliberately with-holding the payments due to the petitioner.

(f) The petitioner, despite several requests, did not produce the original documents/agreements for inspection.

(g) When the validity of the arbitrable agreement is left to be decided by the Arbitrator, in order to comply with the solemn order passed by this Court, the respondents herein tried their best to furnish the Bank Guarantee, but could not do so due to paucity of means.

(h) The Division Bench while disposing the appeal, did not go into legal issues, as the primary grounds raised were left for assessment before the Arbitrator and the respondents have made application before the Arbitrator for adjudicating the validity of the alleged agreement which is pending for adjudication.

5. The respondents have also filed affidavit dated 14.09.2021 stating as follows:

The nature of the business transactions, is to purchase raw shrimps and process them and sell the same to various customers, both domestic and overseas, mostly to the wholesalers for their further supplies to end-users. The firm in its last financial year being 2020-2021 earned a profit of Rs.1.3 crores. The amount mentioned therein are unaudited figures and based on the accounts drawn by the internal accountants of the said firm. The firm has processed shrimps for about one thousand tons, which is only 20% of its present capacity, due to lack of means for increasing the turnover to its optimum. Since the firm is not utilising its full capacity, the firm is not able to earn at its optimum percentage of turnover, particularly due to spending its fixed costs, which would be same for any amount of turnover below its full capacity. The respondents are exporting the shrimps to few countries being China, Japan, Vietnam an Kuwait. Other than the said countries, the respondents have not yet supplied the said shrimps to any other country after the date of passing of the order, dated 31.07.2020. The respondents have not acquired any business after the date of passing of the order dated 31.07.2020. The respondents are not having any other business for commercial or economical gain. The respondents have not made any exports to European Union after the said order dated 31.07.2020. The firm is having a capacity of processing/producing shrimps for a volume of 5000 mertic tons. Though in the web-site, the respondents are making exports worldwide including markets such as ("like") Japan and EU, the fact remains that no exports have been made to EU. The purpose of web-site is to impress upon the visitors of the said web-site that the firm is doing a very good business in order to attract further customers and as such, the web-site is made highly decorative and impressive showing the best side of the firm and accordingly, the said web-site was made for the said purpose.

6. Learned counsel for the petitioner submitted that on 21.12.2018, the petitioner and M/s.Rising Tide represented by its Partners viz., Mr.Rohan Daniel Mukherjee and Mr.Arnab Victor Mukherjee, the respondents herein, executed a dealership agreement, dated 21.12.2018 and a business term, sheet, dated 21.12.2018. Between post-March 2019 and June 2019,, the said M/s.Rising Tide started to default in making payment against the invoices raised by the petitioner and honour its obligations under the said dealership agreement. As such, a sum to the tune of Rs.5,14,03,344/- stands due and outstanding towards principal amount from the said M/s.Rising Tide to the petitioner herein. The respondents have also provided Balance Confirmation, dated 30.08.2019 on 30.09.2019. Further, on 16.12.2019, owing to the non-payment of the outstanding dues, the petitioner filed an application bearing O.A.No.1136 of 2019 and A.Nos.9720 and 9721 of 2019 and 138 of 2020 under Section 9 of the Arbitration and Conciliation Act, 1996, before this Court for directions to be issued to respondents and M/s.Rising Tide to deposit the outstanding amount of Rs.5,14,03,334/- towards admitted principal amount and a further amount of Rs.28,47,008/- towards interest calculated at 21% p.a. (as on 16.11.2019) with

this Court or in the form of a Bank Guarantee in favour of the petitioner. Thereafter, the petitioner filed a petition bearing O.P.No.441 of 2020 under Section 11 of the Arbitration and Conciliation Act for appointment of a sole arbitrator to adjudicate the dispute between the parties. The said arbitral proceedings are under-way and is in the stage of trial. On 27.07.2020, upon the direction of this Court, vide order dated 03.01.2020 and 13.07.2020, the respondents herein filed affidavits, dated 27.07.2020 of declaration of assets. Further, on 31.07.2020, this Court, vide common order in O.A.No.1136 of 2019 and A.Nos.9720 and 9721 of 2019, observed that "the liability has not been disputed" and directed the respondents and M/s.Rising Tide "to furnish a Bank Guarantee to a tune of Rs.5,14,03,344/- within a period of two months from the date of receipt of a copy of this order". The said common order was confirmed by the Division Bench of this Court, vide order dated 15.02.2021.

7. Further, on 22.02.2021, learned counsel for the petitioner issued a letter to the respondents, requesting compliance of the order dated 31.07.2020 passed by this Court. However, on 26.03.2021, the petitioner has deliberately ignored the said letter dated 22.02.2021 and failed to furnish the said Bank Guarantee as per the above said order dated 31.07.2020. Accordingly, the petitioner filed the present contempt petition against the respondents before this Court for wilfully disobeying the directions of this Court issued on 31.07.2020. Further, on 01.06.2021, the respondents herein had majority shares (worth Rs.6

crores) in M/s.Matara Aquaculture West Bengal Private Limited, until 01.04.2019 and subsequently, transferred their holding worth Rs.5,86,30,000/- (65.13% of the total holding in the Company) to one Mrs.Mary Ann Mukherjee (who is mother of the respondents herein) and this evidence the fact that the said Matara Aqua is closely related to the respondents herein. Though the said transfer is alleged to have been effected on 01.04.2019, it is an admitted fact that the same was subsequently updated with the Ministry of Corporate Affairs on 01.06.2021, i.e. pursuant to initiation of the present contempt proceedings before this Court on 26.03.2021. Further, on 19.08.2021, the respondents opposing the Contempt proceedings, filed their counter affidavit, dated 19.08.2021 in the present Contempt Petition, wherein the respondents categorically stated in paragraph 6 that "we did not have either the means or capacity to furnish bank guarantee for the amount mentioned in the said application as such whatever the credit worthiness was already utilised and we did not have any other assets which was sufficient to provide as a collateral to the bank for furnishing such bank guarantee.

8. Learned counsel for the petitioner further contended that, on 24.08.2021, upon carrying out due diligence of the affairs of the respondents, it was discovered that the respondents, five days after deposing on affidavit, dated 19.08.2021 before this Court that they do not have the wherewithal to comply with the order of this Court, made an outright purchase of a flat ad-measuring

about 3,000 Sq.Fts. by way of execution of sale deed, dated 24.08.2021 in Kolkatha for a sum of Rs.3.95 crores. The respondents had made the payment of sale consideration of Rs.3.95 crores to its vendor on 23.08.2021, out of which, a sum of Rs.3,51,05,000/- was paid through Demand Draft drawn on Bank of Baroda and further, from a perusal of the Bank statements of the respondents provided by them in the present Contempt Petition, it is seen that on 23.08.2021, a sum of Rs.2,56,50,000/- had been transferred to the respondents herein from their own partnership firm, i.e. M/s.Rising Tide for the purpose of purchase of the said immovable property. In addition to the above, Mrs.Mary Ann Mukherjee (mother of the respondents herein) had also transferred a total sum of Rs.1.01 crores to the respondents herein on 21.08.2021, 23.08.2021 and 20.09.2021. Subsequently, after a period of about five months on 31.01.2022, the respondents herein created an encumbrance over the said property by availing loan from Union Bank of India.

9. On 14.09.2021, pursuant to the Order dated 27.08.2021 in the present Contempt Petition, the Respondents herein filed an Affidavit dated 14.09.2021 in the present Contempt Petition, with regard to their business and details of their assets. It is pertinent to note that as per the said Affidavit dated 14.09.2021, the Respondents in their firm viz., M/s. Rising Tide had earned a profit of Rs.1.3 Crores in the FY 2020-2021 (Covid period) and exported shrimps to countries like China, Japan, Vietnam and Kuwait. On 04.10.2021 Though the Respondents

pleaded their inability to furnish Bank Guarantee as per the directions in Section 9 Judgement, the Respondents travelled to various international trips to California, Germany, Maldives during the Covid-19 pandemic period and purchased a Land Rover Range Rover worth Rs.1.28 Crores after the said Section 9 Judgement and admittedly had earned profit of over Rs. 1.3 Crores. Accordingly, this Hon'ble Court vide Order dated 04.10.2021 was pleased to direct the Respondents to deposit a sum of Rs.1 Crores to the credit of Section 9 Application before this Hon'ble Court on or before 27.10.2021.

10. On 29.10.2021, upon request made by the Respondents, the said Order dated 04.10.2021 was modified with a direction to Respondents to furnish Bank Guarantee of Rs.1 Crore by 22.11.2021 and also directed the Respondents to indicate the security for the remaining amount. It was categorically observed by this Court in the said Order that the *"Failure to furnish any such guarantee, they will be proceeded for violation of the orders of this Court as per law, since sufficient opportunities have been given."* Further, on 20.04.2022 When the Petitioner placed material facts along with supporting documents evidencing the willful disobedience on the part of the Respondents to comply with the directions, this Hon'ble Court vide Order dated 20.04.2022 was pleased to direct the Respondents to pay a sum of Rs. 10 Lakhs to the Petitioner as compensation before 28.04.2022; to furnish Bank Guarantee of Rs. 1 Crore with the Registry by 20.05.2022; and to furnish the details of security for the remaining amount.

11. Learned counsel for the petitioner further contended that, on 29.04.2022 the Respondents paid Rs. 10 Lakhs as compensation and furnished the Bank Guarantee. However, the Respondents failed to furnish details of security for the remaining amount of Rs.4.14 Crores till date. The said fact was taken note of by this Court and observed that the Respondents have not complied with the Order dated 20.04.2022. Accordingly, the present Contempt Petition was disposed of. On 11.10.2022, the Petitioner approached this Court with Sub.Appln.No.192 of 2023 seeking to re-open the Contempt Petition No.625 of 2021, in order to ensure the compliance of the Order dated 31.07.2020 and to punish the respondents for contempt as observed in the Order dated 29.04.2022.

12. Further, according to the learned counsel, on 07.01.2023 The Petitioner issued a Letter to the Commissioner of Police, Chennai to take necessary steps to detain the Respondents for offence of contempt of Court. Thereafter, seeing no response, the Petitioner herein filed a Sub-Appl.No.239 of 2023 praying for direction to detain 1st and 2nd respondents therein.

13. Ultimately on 19.12.2023, after due consideration of the facts and materials placed by the petitioner, vide Additional Affidavit dated 30.10.2023, this Court, vide Order dated 19.12.2023 re-opened the present Contempt Petition and permitted that parties to produce all relevant and necessary documents to prove their case. Subsequently, the respondents challenged the said order dated 19.12.2023 in Letters Patent Appeal, i.e. LPA. No. 2 of 2024 and

the same was dismissed, vide order dated 15.02.2024. Thereafter, the petitioner filed another additional affidavit dared 09.03.2024 in the present proceedings highlighting the respondents' source of funds to purchase a flat worth Rs.3.95 Crores. The respondents filed a Review Petition in Rev.P.No.50 of 2024 seeking clarification of the order dated 15.02.2024. The Honourable Division Bench of this Court, vide Order dated 21.03.2024, permitted that Parties to produce all relevant and necessary documents to prove their case.

14. From the above submissions made by learned counsel for the petitioner, it is clear that, despite having funds to purchase property worth Rs.3.95 Crores, a car worth Rs.1.28 Crores and went on foreign trip, the respondents are taking the position that they do not have funds to comply with the order of this Court. It is therefore prayed by the learned counsel for the petitioner that this Court may hold that the respondents are in "Contempt of Court" and order imprisonment for period of 6 months in accordance with Section 12 of the Contempt of Courts Act, 1971.

15. In answer to the above submissions made by the learned counsel for the petitioner, the learned counsel for the respondents stated as follows, with regard to the questions raised by the respondents in respect of purchasing the flat, car and foreign trip in seriatim.

(i) In respect of purchase of the flat it is submitted that, since the money was required for continuing the business of the alleged contemnors, and they were not having adequate money for the same and approached the financial institution/bank when they were advised to put in some immovable properties for the purpose of mortgage against which the loans could be granted.

(ii) On 29 April 2021 the firm of the alleged contemnors requested another known company, for a short-term loan for Rs.4 Crores for the purpopse of by buying a property in order to mortgage the same to the bank, and immediately the loan was granted after the mortgage, the said money would be refunded back to the said compnay (sr.no.2 of the Type set of documents)

(iii) Thereafter on 5th May 2021, the said company agreed to extend their short-term loan but only for the quantum of Rs.3 Crores, with the condition to recall on need basis (sr.no.3 of the type set of documents)

(iv) Between 18/052021 to 23/08/2021, the said compnay gave a sum of rupees 2.965 crore (almost 3 crore) to the said firm of the alleged contemnors, for the said purpose. Current bank certificate from Union Bank of India confirming payments during this period is provided on record as sr.no.4 of the type set of documents.

(v) Since the said money was not adequate to purchse the said flat, between 21/08/2021 to 23/08/2021 some of the family members and relatives were approached by the alleged contemnors to obtain the deficient amount and was provided to them for the said the specifi purppose, the passbook showing such a recipient of the money is also provided on record as sr.no.5 and 6 of the type set of documents.

(vi) After getting the asid money from the family members and relatives, the money received by the said firm of the alleged contemnors was also transferred to the account of the alleged contemnors for purchasing the said flat and accordingly after the said money was accumulated in the bank account of alleged contemnors, the said flat was purchased and thereafter mortgaged with the financial institution.

(vii) In such circumstances, the said flat was never purchased out of own funds of the alleged contemnors, but only form the borrowed funds and as such the said flat was never unencumbered since beginning and the same was purchased from the followed funds as follows:

A) Amount received as loan from the company and relatives:

Rs.2.965 crores from known company to firm as per bank certificate 9doc-4) and Rs.0,.96 cr from relatives as per Bank statement relevant section (doc-5 & 6) Rs.3.9250 cr and Amount paid for the property: Rs.3.95 cr less TDS 3.95 lac = Rs.3.9105

(viii) In respect of the purchase of the car, which the applicant alleges to be purchased for the purpose of luxury and not for the purpose of business out of their own funds.

(ix) In such regard, it is most humbly stated that the alleged contemnors were already having one car in the name of the Firm of the alleged contemnors which was duly disclosed in the affidavit of assts and after due consideration of the same impugned order was passed.

(x) By efflux of time, the said car became old and was requiring too much expense for manufacture and thereafter, the said car brand made an offer to get the old car exchanged, it was a prudent decision to get the same replaced and that was done purely on getting financial assistance from the bank and after the exchange, value of the old car, not a single rupee was required to be paid by the alleged contemnors for replacing the said car as because more than 90% of the value of the new car was sanctioned by the financial institution. So, technically, it can be observed that upon exchange of car, instead of paying any amount of money, certain amount was received in the hands of the alleged contemnors in exchanging the said car. Such exchange was also required because, the old car was financed by HDFC Bank and the new car was financed by a public sector unit Bank which was at a better interest rate.

(xi) Moreover the said car being purchased in the name of the firm of the alleged contemnors itself shows that the same was purchase for the purpose of business and not for personal use of the alleged contemnors either for luxury or otherwise. It is also pertinent to mention that since the alleged contemnors are in business of exports, many foreign buyers visiting their office and factory are required to be commuted with a car having a good repute and brand in order to maintain their dignity, and as such a good and expensive car is very much required in the business of the alleged contemnors and accordingly the said car was purchased purely for business purpose with financial assistance from banks and that too by replacing the earlier old car.

(xii) Documents showing hypothecation of the new car with financial institution/bank which is in the name of the firm of the alleged contemnors and are not in the personal name, being its registration certificate is annexed with the typeset of document marked as S1. no.2 of the II Additional typeset of documents.

(xiii) The sanction letter and the details of EMI to be paid to the financial institution/bank is also annexed with the typeset of document marked as Sl.No.1 of the II Additional typeset of documents.

(xiv) In respect of the foreign trip made by one of the alleged contemnors, which the applicant alleges to be for the purpose of leisure and not for the purpose of business, out of their own funds.

(xv) In such respect it is most humbly stated that the alleged contemnors are in the business of exporting shrimps and they have to explore different buyers in different country for expanding their export business. It is further stated that initially the alleged contemnors were not exporting the product to USA and since USA was a prospective market for the products of the alleged contemnors it was very much required that someone on behalf of the alleged contemnors visit buyers at USA for the purpose of expanding their business by way of exports to USA. Due to such a requirement of business expansion one of the alleged contemnors had to visit California in spite of scarcity of money in October 2020. It is also very much pertinent to mention that had the same was not so vital and important, no one would have left the country in the midst of Covid-19 situation being at its peak. It is further pertinent to mention that due to such effort of one of the alleged contemnors by practically risking his life, alleged contemnors got certain order from California against which they could export certain products to California. USA in the following year of 2021. Certain documents like commercial invoice, bill of lading, customs shipping bill, copy of email confirmation from buyer/agent and purchase order issued by the buyer in California for some of the shipments are annexed and collectively attached as serial number 3 of the II Additional typed-set of documents. In support his submissions, learned counsel for the respondents relied on the following judgments:

(i) 2000 (2) SCC 164 (K.A.Ansari and another Vs. Indian Airlines Limited);

(ii) MANU/TN/1998/2020 (V.Saroja Vs. The Government of Tamil Nadu and others);

(iii) 1987 (2) SCC 179 (State of U.P. Vs. Brahm Datt Sharma) and

(iv) MANU/AP/1323/2014 (Telangana Non-Gazetted Mutually Aided Co-operative Housing Society Limited Vs.s State of A.P).

16. Admittedly, the petitioner filed the present Contempt Petition, in which, this Court passed the following order on 29.04.2022:

> "This Contempt Petition was filed by the petitioner to punish the respondents for contempt and wilful disobedience of the order dated 31.07.2020 passed by this Court in A.No.9720 of 2019.
>
> 2. After hearing both sides, this Court by its order dated 20.04.2022 had issued the following directions:
>
> > 1. The respondents/contemnors are directed to pay Rs.10.00 lakhs to the petitioner as compensation on or before 28.04.2022.
> >
> > 2. On payment of such cost towards compensation, time is extended till 20.05.2022 to furnish the Bank Guarantee for the balance amount of Rs.1.00 crore (Rupees One Crore) meeting with the requirements of the Registry and to furnish the details of security for the remaining amount, failing which, the petitioner is at liberty to initiate steps for attachment or for detention.
>
> 3. When the matter is taken up for hearing today (29.04.2024), it was reported that the order of this Court dated 20.04.2022 has not been complied with. Therefore, the petitioner is at liberty to proceed further in the manner known to law.

4. Accordingly, this Contempt Petition is disposed of."

17. Thereafter, the petitioner filed Sub-Application in Sub.A.No.192 of 2023 in this Contempt Petition for re-opening the contempt petition and also filed Sub.A.No.239 of 2023 for directing the third respondent to detain the first respondent for committing the Contempt of the order dated 29.04.2022 of this Court. This Court has taken up the above said Sub-Applications together and passed order on 19.12.2023 and the relevant portion of the said order dated 19.12.2023 reads as follows:

"11. Therefore, on a perusal of the affidavit filed by the applicant and also Counter Affidavit filed by the respondents, this Court find that there are Prima facie materials to re-open the Contempt Petition in Cont.P.No.625 of 2021. Therefore, this Sub Application is allowed and Contempt Petition is also re-opened for hearing.

12. As far as Sub Application No.239 of 2023 is concerned, both the petitioner and respondents are directed to file the relevant documents and this application will be heard later.

13. Sub Application No.192 of 2023 is Allowed. Contempt Petition No.625 of 2021 is reopened.

14. List Cont.P.No.625 of 2021 and Sub

Application No.239 of 2023 for hearing on 10.01.2024."

18. Thereafter, challenging the above said order dated 19.12.2023, the respondents in this contempt petition filed appeal in Letters Patent Appeal in L.P.A.No.2 of 2024, in which, the Division Bench of this Court, after hearing both sides, passed order on 15.02.2024, observing as follows in paragraph 15 and 19:

> "15. Per contra, the learned Senior counsel for the respondent invited the attention of this Court to series of orders passed by the learned Judge and contended that inspite of extension of time granted, the appellants have not complied with the order passed by the learned Judge. Even though the learned Judge, on request, directed the appellants only to furnish bank guarantee for Rs.1 crore, instead of cash deposit, yet, they did not comply with such direction. The learned Judge, having satisfied with the plea of the respondent that the appellants are having the wherewithal to comply with the order, has observed that the appellants wilfully and deliberately failed to comply with the order, has observed that the appellants wilfully and deliberately failed to comply with the order and therefore, rightly reopened the contempt petition.

The respondent has also filed several documents to show that the appellants are having the wherewithal and resourceful enough to comply with the direction to furnish bank guarantee. Thus, the deliberate inaction on the part of the appellants in not complying with the order, would only compel the learned Judge to reopen the contempt petition to specifically examine as to whether the appellants have deliberately violated the directions issued by the learned Judge to deposit the amount within a specified time limit. The learned Senior counsel therefore submitted that the order of the learned Judge does not call for any interference at the hands of this Court".

"19. In the result, the Letters Patent Appeal is dismissed. However, liberty is granted to the appellants to place all the materials to substantiate their stand before the learned Judge. No costs. Consequently, connected miscellaneous petition is closed."

19. Subsequently, as per the directions issued by the Division Bench in the above said LPA, the contempt petitioner filed dates and events and related particulars and the respondents/contemnor also filed additional typed set of papers containing particulars, on 19.03.2024, from which, it is evident that on

29.06.2021, car loan sanction letter issued by Bank of Baroda, on 09.08.2021 which is the Certificate of Registration of the vehicle purchased by the respondents mentioning the details of hypothecation by Bank of Baroda, May 2021 relates to invoice and Bill of Lading relating to the export made by the respondents to the California, the memo of submissions filed by the respondents, the common order dated 27.01.2023 passed in I.A.Nos.3, 6 and 7 of 2022 in Arb.Case No.6 of 2021 and again on 27.01.2023, common order in I.A.No.5 of 2022 in Arb.Case No.6 of 2021.

20. Thereafter, this Court heard both sides and perused the materials available on record.

21. Admittedly, this Court passed conditional order on 31.07.2020, directing the respondents/contemnors to furnish Bank Guarantee to the tune of Rs.5,14,03,344/- within a period of 12 months. The said order dated 31.07.2020 was challenged by the appellants by filing O.S.A.No.240 of 2020 and a Division Bench of this Court, by judgment dated 15.02.2021, had not interfered with order impugned therein, dated 31.07.2020 passed in Application No.9720 of 2019, while leaving it open to the parties to adjudicate the dispute in the Original Application filed for appointment of Arbitrator. Even thereafter, the respondents herein did not comply with the order dated 31.07.2020 passed by this Court in Appln.No.9720 of 2019. Hence, the petitioner-Company preferred this Contempt Petition to punish the respondents for contempt and wilful

disobedience of the said order dated 31.07.2020. Hence, the petitioner preferred the present contempt petition along with sub-application Nos.147, 517 and 527 of 2021, in which, by order dated 29.10.2021, this Court directed as follows:

> "Subsequent to the order, dated 04.10.2021, to deposit Rs.1,00,00,000/- to the credit of A.No.9720 of 2019, now Sub-Application No.527 of 2021 has been filed by the applicants to modify the abovesaid order and to permit the applicants to furnish a Bank Guarantee for Rs.25 lakhs in lieu of cash deposit of Rs.1 crore and extend the time by 60 days."
>
> ....
>
> 5. Submission of the learned counsel for the applicants is recorded. Accordingly, the applicants are directed to furnish bank guarantee on or before 15.12.2021. On furnishing such Bank Guarantee, the respondent is directed to indicate the security for the remaining amount on that day. Failure to furnish any such guarantee, they will be proceeded for violating the orders of this Court, as per law, since sufficient opportunities have been given."

22. Subsequently, the respondents herein are said to have furnished the Bank Guarantee to the tune of Rs.5,14,03,344/- and the said Bank Guarantee was returned by the Registry of this Court, for certain defects and having

observed that though the respondents were granted sufficient time, they did not furnish the Bank Guarantee and thereby, disobedience of the order of this Court, amounts to "Contempt of Court" and violated and committed the 'contempt of Court'.

23. This Court, by order dated 20.04.2022, directed the respondents to pay Rs.10 lakhs to the petitioner as compensation on or before 28.04.2022. Besides furnishing Bank Guarantee and on payment of such cost towards compensation, time was extended till 20.05.2022 to furnish the Bank Guarantee for the balance amount of Rs.75 lakhs meeting with requirements of the Registry and to furnish the details of security for the remaining amount, failing which, the petitioner was granted liberty to initiate steps for attachment or for detention of the respondents and the Contempt Petition was directed to be listed on 29.04.2022 for further orders.

24. Thereafter, this Court, on 29.04.2022, observed that the said order of this Court, dated 20.04.2022 was not complied with and and therefore, the petitioner was granted liberty to proceed further in the manner known to law and accordingly, this Contempt Petition was disposed of. Subsequently, the petitioner filed Sub.A.No.192 of 2023 in the present Contempt Petition seeking to re-open the Contempt Petition and this Court also, after hearing both sides, on 19.12.2023, allowed Sub.A.No.192 of 2023 filed for re-opening the Contempt Petition and the Contempt Petition was re-opened and both the Contempt

Petition and Sub.A.239 of 2023 were directed to be listed on 10.01.2024 for hearing on merits.

25. The respondents in the Contempt Petition, challenged the above order dated 19.12.2023 by way of appeal in L.P.A.No.2 of 2024 and the Division Bench of this Court dismissed the said L.P.A. by granting liberty to the appellants (respondents herein) to place all the materials to substantiate their stand, before the learned Single Judge.

26. Now, on hearing both sides and on a perusal of the additional affidavit which was received by the Registry on 11.03.2024, filed by the petitioner, along with additional documents way of typed set of papers and the respondents have filed convenient typed set of papers, which was received by the Registry on 22.04.2024 and the respondents also filed second additional typed of papers, which was received by the Registry on 20.03.2024.

27. Even the respondents have admitted that after passing of the order of this Court, dated 31.07.2020, pending this contempt petition, filed an application under Section 11 of the Arbitration and Conciliation Act, for appointment of an Arbitrator. It is useful to extract the relevant portion of the judgment, dated 15.02.2024 in L.P.A.No.2 of 2024 as follows:

> "5. On 31.07.2020, when the Original Application viz., O.A.No.1136 of 2019 along with other applications were taken up for hearing, the learned

> Judge, after hearing both sides, passed an order directing the appellants to furnish bank guarantee to the tune of Rs.5,14,03,344/- in favour of the respondent herein, within a period of two months. In the said order dated 31.07.2020, the learned Judge also granted liberty to the respondent to file an affidavit in the event of any assets of the appellants that were not disclosed by them in the affidavits submitted by them, are discovered by the respondent, besides filing application under section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator."

28. Subsequently, the contempt petitioner filed O.P.No.441 of 2020 invoking Section 11 of the Arbitration and Conciliation Act, 1996, in which an Arbitrator was appointed to adjudicate the dispute *inter-se* between the parties.

29. In the meanwhile, in the contempt petition, notices, dated 16.09.2020 and 22.02.2021 were issued, calling upon the respondents in the Contempt Petition to comply with the order dated 31.07.2020 passed by the learned Judge and to furnish Bank Guarantee for Rs.5,14,03,344/-, but however, the respondents in the Contempt Petition had not complied with the order dated 31.07.2020 and therefore, the petitioner initiated contempt proceedings by filing the present Contempt Petition. Even though they have filed Original Side Appeal (OSA), the Division Bench had not interfered with the said order dated

31.07.2020.

30. Pending the present contempt proceedings, the respondents herein filed counter affidavit, dated 19.08.2021. The learned counsel for the respondents herein submitted that the learned Arbitrator passed interim order on 27.01.2023, pending the arbitration proceedings, but the same has nothing to do with the present Contempt Petition and it is only subsequent to the filing of the Contempt Petition, and the same can only be taken into consideration if the final order passed in the Arbitration O.P. However, the petitioner has levelled certain allegations in the additional affidavit dated 09.03.2024 and that the respondents herein, despite having sufficient means, also purchased sophisticated car to the tune of Rs.1 crore and odd, and they have also purchased the house property also and they also went foreign trip, which shows that the respondents are having sufficient means, but they did not comply with the order and therefore, non-compliance of the order of this Court, dated 31.07.2020 is willful and the respondents herein have committed "contempt" and therefore, the respondents/contemnors have to be detained in Civil Prison.

31. Though the respondents have admitted that they purchased a car to tune of Rs.1 crore and odd, however, they have stated that they have replaced the old car with a new one, on getting financial assistance from the Bank, after exchange value of the old car. The respondents allege that they did not spend even a single pie for the purchase of the car.

32. As far as purchase of the land is concerned, the respondents/contemnors have stated a reason that for continuing their business, they were not having adequate funds and for the same, they approached the financial institution/Bank and they have purchased the flat for the purpose of mortgaging, against which, the loan could be granted.

33. Therefore, the contemnors applied for another loan for short term loan of Rs.4 corres (approximately) for the purpose of buying the property and in order to pay the Bank, immediately, the loan was granted after mortgage and the money would be refunded by the Bank to the Company and also, in May 2021, the Company accorded sanction to extend their short term loan, but only for calculating Rs.3 crores (approximately) with a condition to recall on need basis. The said company also gave a sum of Rs.2.965 crores (approximately) to the contemnors for the said purpose and since the money was not adequate to purchase the flat between 21.08.2021 and 23.08.2021 and some of the family members and relatives, were also approached for financial help and therefore, from that source, the contemnors purchased the car.

34. As far as the foreign trip is concerned, the contemnors are in business and exporting shrimps and they have to export it to different to different countries for expanding their export business and therefore, they went to USA and in order to get certain orders from California and other places, they went only for the business trip and not sophisticated trip.

35. Therefore, considering the facts and circumstances, the main allegation of the petitioner is that after passing of the order of this Court, dated 31.07.2020, the respondents did not comply with the order and despite sending notice, the respondents have not complied with the order and therefore, they have filed the present Contempt Petition and even in this contempt petition, the respondents/contemnors filed counter affidavit stating that they have no means to comply with the conditional order, and they have stated some reason on the merits of the matter, which can only be decided in the Arbitration O.P., and not in this Contempt Petition.

36. However, the respondents/contemnors themselves admitted the allegation levelled by the petitioner that they have purchased the flat worth about Rs.4 crores and also they have purchased car worth about Rs.1.25 crores and they went foreign trip, which clearly shows that the contemnors are doing the business well and the contemnors are in a position to raise the funds for purchasing a flat and went to foreign trip, which shows that the contemnors are having sufficient means and to prove the means, one need not have ready cash in their pocket and if a person is able to mobilise the funds for purchase of the flat for mortgage for running the business and they also purchased sophisticated car by raising loan and roaming over the entire world for business and therefore, it is clear that the contemnors are men of means and despite having the means, the respondents/contemnors did not obey the order of this Court, as discussed

above in the preceding paragraphs.

37. After passing the order by this Court and even after giving sufficient opportunities to the respondents/contemnors to comply with the order under contempt and various orders having been passed pending the contempt petition, they have not complied with the order(s) of this Court stating that there are no means to comply with the order. However, pending the contempt petition, the respondents/contemnors have purchased the sophisticated car and also purchased an immovable property and that they have also went a foreign trip and therefore, the reasons for non-compliance is not acceptable in the above circumstances, knowing fully well the order of this Court, they wilfully disobeyed the order under contempt and therefore, to meet the ends of justice, it is necessary that the respondents/contemnors are to be directed to undergo civil imprisonment, since the imprisonment is an exception and fine is the rule.

38. In the above context, Section 12(3) of the Contempt of Courts Act, reads as follows:

> "Section 12: Punishment for contempt of Court:
>
> ....
>
> (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."

39. Accordingly, the respondents/contemnors are directed to undergo simple imprisonment for a period of one month from today and in case the respondents/contemnors complies with the order of this Court under contempt and the subsequent orders connected thereto, they shall be released forthwith, unless they are required in connection with any other case.

40. Despite the order of this Court, the respondents/contemnors have wilfully disobeyed the order(s) and this Court finds from the above said facts and circumstances and materials, that the respondents/contemnors have violated the order(s) of this Court and thereby, committed contempt. Therefore, the sub-application filed by the petitioner in Sub.A.No.239 of 2023 is allowed and the respondents/contemnors shall undergo civil imprisonment as stated above.

41. On payment of Batta, the Registry is directed to issue warrant of arrest of the respondents/contemnors and the concerned Police is directed to execute the warrant in respect of the respondents/contemnors, and they shall undergo the civil imprisonment. Registry shall issue warrant against the

respondents/contemnors on payment of subsistence allowance by the petitioners.

42. With the above observations and direction, the Contempt Petition is disposed of. There shall be no order as to costs.

19.07.2024

cs

Office to note: Issue this order copy by today itself.

P.VELMURUGAN, J

cs

Pre-delivery Order

in Cont.P.No.625 of 2021

Order pronounced on

19.07.2024