

S.No.2

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
01-03-2024 AT 10:30 AM**

CP(IB) No.677/7/HDB/2018

And

Cont. A(IBC) 3/2023 in CP(IB) No.677/7/HDB/2018

u/s. 7 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Financial Creditor

VS

VMC Systems Ltd

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)

SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

Cont. A(IBC) 3/2023

Orders pronounced. Therefore we, hereby direct the contemnors, namely, Ms. Vuppalapati Hima Bindu, Mr. Bhagavatula Venkata Ramana, and Mr. Vuppalapati Venkata Rama Rao, to be present in person before the Tribunal on **05.03.2024 at 10::30 AM** and state why sentence in accordance with Section 12 of the Contempt of Court Act, shall not be awarded to them, in default, orders appropriate will be passed against them.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

Contempt Application No.3 of 2023

in

CP (IB) No.677/7/HDB/2018

APPLICATION UNDER SECTION 425 OF THE
COMPANIES ACT, 2013 READ WITH RULE 11 OF
NCLT RULES, 2016.

In the matter of M/s VMC System Ltd.

Between:

Madasa Kumar

Liquidator of

M/s VMC Systems Limited

.. **Applicant/**

VERSUS

1. **Vuppulapati Himabindu**
DIN: 01582051.
2. **Bhagavatula Venkata Ramana**
DIN: 01270825.
3. **Vuppulapati Venkata Ramana Rao**
DIN: 01272637.

Nos.1, 2 and 3 are at:

Flat No.404, Lotus Flora Apartments

Plot No.4 & 5, 1-10-38/2

Begumpet, Hyderabad – 500016.

.. Respondents
(Ex-Directors)

and in the matter of
(in CP (IB) No.677/7/HDB/2018

State Bank of India

.. Financial Creditor

Versus

VMC Systems Limited

.. Corporate Debtor

Date of order : 01.03.2024

Coram:

DR.VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)

SHRI CHARAN SINGH
HON'BLE MEMBER (TECHNICAL)

Parties / counsels present:

For Liquidator : Ms. JVL Bharati, Counsel
Liquidator : Shri Madasa Kumar (in person)

For respondents : Shri B. Nitish Kumar, Counsel.

ORDER

This application is filed by the applicant/ Liquidator of M/s VMC Systems Ltd against ex-Directors of the Corporate Debtor for the following relief:

“(a) Issue directions to hold respondents no.1, 2 and 3 guilty of contempt of Court and commit them to imprisonment and impose appropriate fine as per the provisions of section12 of the Contempt of Courts Act, 1971 and such other provisions as may be applicable.”

2. AVERMENTS MADE IN THE CA:

2.1 The Tribunal vide order dated 26.04.2021 in IA No.279 of 2019 in CP (IB) No.677/7/HDB/2018 has ordered that M/s VMC Systems Ltd shall be liquidated and appointed the applicant/ Madasa Kumar as Liquidator.

2.2 The facts of the case are such that the M/s VMC Systems Ltd / Corporate Debtor represented by respondents no.1, 2 and 3 herein (ex-Directors) had availed Term Loan and Working Capital limits from several financial institution under the Consortium arrangement led by SBI. The Bank had initiated CIRP under IBC. Since no resolution plans were received

during the CIRP period, the Tribunal vide the above order dated 26.04.2021 passed liquidator order.

2.3 In an application filed by the Liquidator against the ex-directors being IA No.524 of 2021 in CP (IB) No.677/7/HDB/2018, this Tribunal vide order dated 19.10.2022 (Annexure-I of this CA) has passed the following order:

“13. Hence we hereby set aside the impugned sale transaction between M/s Cemetric (IT) Services Pvt Ltd, Hyderabad vide agreement number 153007 dated 21.12.2018 for a consideration of Rs.2,20,17,537/- to M/s Cemetric and direct the ex-Directors of the Corporate Debtor to forthwith refund/ pay the sum of Rs.2,20,17,537/- to the liquidation account of the Corporate Debtor enabling the Liquidator to distribute the same as per the waterfall mechanism u/s 53 of the IBC.”

2.4 Since the respondents have not complied with the above order the applicant has sent e-mail dated 28.10.2022 (Annexure-II of this CA) to the respondents followed by letter dated 02.11.2022 (Annexure-III of this CA) and further e-mail dated 14.11.2022 (Annexure-IV of this CA).

2.5 The respondents (ex-directors) sent mail dated 14.11.2022 denying any liability to pay the amount claimed by the Liquidator and asking the Liquidator to withdraw his letter dated 02.11.2022. Copies of individual

replies given by the respondents are at Annexure (b), Annexure (c) and Annexure (d) to this CA (pages 16, 17 & 18 of this CA).

3. In view said non-compliance on the part of the respondents of order dated 19.10.2022 passed by this Tribunal in IA No.524 of 2021 in CP (IB) No.677/7/HDB/2018, the applicant/ Liquidator prefers this application invoking section 425 of the Companies Act, 2013 read with section 12 of the Contempt of Courts Act, 1971.

4. Opportunity was given to the respondents to file Counter on 02.03.2023. However, Counter is not filed despite sufficient time granted to the respondents, as noted by this Tribunal on 03.01.2024. Hence the Tribunal has no option but to proceed with adjudication of this application even in absence of the respondents.

5. In the light of the contest as above stated, the point that arises for our consideration is;

Whether the respondents, namely, Ms.Vuppalapati Hima Bindu, Mr.Bhagavatula Venkata Ramana, and Mr.Vuppalapati Venkata Rama Rao, have violated the order of this Tribunal dated 19.10.2022 in IA no.524/2021? If the answer is yes, whether the said violation is wilful, and for what action?

6. We have heard Learned Liquidator Shri Madasa Kumar, perused the record.

Point.

Whether the respondents, namely, Ms.Vuppalapati Hima Bindu, Mr.Bhagavatula Venkata Ramana, and Mr.Vuppalapati Venkata Rama Rao, have violated the order of this Tribunal dated 19.10.2022 in IA no.524/2021? If the answer is yes, whether the said violation is wilful, and for what action?

7. *At the outset, we wish to refer to the following, admitted factual backdrop of the subject dispute, as we are of the view that the same is essential for effectively answering the Point that we have framed supra.*

8. This Tribunal vide order in IA No.279/2019, while setting aside the sale transaction, passed the following order:

“13. Hence we hereby set aside the impugned sale transaction between M/s Cemetric (IT) Services Pvt Ltd, Hyderabad vide agreement number 153007 dated 21.12.2018 for a consideration of Rs.2,20,17,537/- to M/s Cemetric and direct the ex-Directors of the Corporate Debtor to forthwith refund/ pay the sum of Rs.2,20,17,537/- to the liquidation account of the Corporate Debtor enabling the Liquidator to distribute the same as per the waterfall mechanism u/s 53 of the IBC.”

9. Admittedly the respondents have not complied the said order nor challenged the same before any Appellate Authority/Court. Therefore,

compliance of the order is imperative, Hence, the letter dated 14.11.2022 by the respondents abundantly makes it clear that respondents have not complied the above said order. Therefore, the breach our order supra by the respondents is more clear than crystal. Therefore, now it is to be seen whether the said breach is willful or not?.

10. The liquidator vide emails dated 28.10.2022, 02.11.2022 and 14.11.2022, the receipt of which has been admitted by the ex-directors of the corporate debtor namely, Respondent no.1-3 herein demanded the respondents to deposit sum of Rs.2,20,17,537/- to the liquidation account of the corporate debtor and also transferred the details of the bank account to which the amount is required to be transferred. The liquidator in the email dated 14.11.2022 the liquidator informed the respondents that if deposit as demanded in the earlier correspondence is not made he would be moving an application for the payment.
11. In response to this 1st Respondent sent letter simply denying the liability to pay the amount either to the corporate debtor or into liquidation estate contending inter-alia “ that alleged to the fraudulent and under valued in IA no.524/21, were done in ordinary court of business”.

12. Similarly letters were also addressed by the respondent no.2&3, thus it is over whelmingly clear that despite providing sufficient opportunity to the respondent to comply the order of this Tribunal, respondents not only failed to pay the deposit money but also denied their liability.
13. Thus, it is clear from the above that, the respondents' contemnors have not only failed in giving any valid reason, for not complying the aforementioned order, but also contended that there is no liability to pay any amount. Hence, we find that breach on the part of the respondents dated 19.10.2022 in compliance of the order is willful.
14. In so far as the power of this Tribunal to punish a person for violation of its order under the [Contempt of Courts Act](#), 1971, is no longer *res integra*, in as much as Hon'ble NCLAT, in re, Girish Kumar Sanghi vs Ravi Sanghi & Ors, Review Application No. 24 of 2019 in Company Appeal (AT) Nos. 156, 157, 158, 159, 160, 161, 162, 163, 164, 165,166,167 of 2019 while upholding the Power of this Tribunal to punish a person for violation of its own order, held as follows.

“ Section 425 of the Companies Act, 2013 empowers the Tribunal and the Appellate Tribunal to punish for contempt of themselves, as quoted below:

"425. Power to punish for contempt.— The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of

contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effect subject to modifications that--

- (a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and
- (b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Company Appeal (AT) No. 156 to 167 of 2019 Central Government may, specify in this behalf."

"From the aforesaid provisions, it is clear that the Tribunal and the Appellate Tribunal are empowered to punish a person for violation of its own order under the 'Contempt of Courts Act, 1971' and are required to follow procedure prescribed under Section 14 of the 'Contempt of Courts Act, 1971' before holding a person guilty of having committed contempt of the Tribunal or the Appellate Tribunal".

15. *In so far as the procedure regarding the matters relating to contempt is concerned, Section 14 of the Contempt of Courts Act, 1971, lays down the same, which is as below,*

Section 14 in the Contempt of Courts Act, 1971

14. Procedure where contempt is in the face of the Supreme Court or a High Court —

(1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall—"

(a) cause him to be informed in writing of the contempt with which he is charged;

(b) afford him an opportunity to make his defence to the charge;

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharge of such person as may be just.

(2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the

Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the Court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify: Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court: Provided further that the Court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid.

16. Since we in our discussions on the preceding paragraphs have held that the respondents are guilty of committing willful breach of our order in IA No.524/2021 dated 19.10.2022, the respondents, namely, *Ms.Vuppalapati Hima Bindu, Mr.Bhagavatula Venkata Ramana, and Mr.Vuppalapati Venkata Rama Rao* are liable to be punished for Civil Contempt, in terms of Section 12 of the Contempt of the Court Act.
17. Before deciding on the sentence, we wish to hear the contemnor. We, therefore, hereby direct the contemnors, namely, *Ms.Vuppalapati Hima Bindu, Mr.Bhagavatula Venkata Ramana, and Mr.Vuppalapati*

Venkata Rama Rao, *to be present in person before the Tribunal on 05.03.2024 and state why punishment in accordance with Section 12 of the Contempt of Court Act, shall not be awarded to them, in default, orders appropriate will be passed against them.*

18. Call on 05.03.2024.

SD

Charan Singh

Member Technical

SD

Dr. Venkata Ramakrishna Badarinath Nandula

Member Judicial

pavani