



THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

Contempt Petition No- 07/ND/2023

IN

Company Petition No. (IB) – 908/ND/2020

*Under Section 60(5) r/w Section 73 of the Insolvency
and Bankruptcy Code, 2016.*

In the matter of:

Orator Marketing Private Limited

.... Financial Creditor

VERSUS

Samtex Desinz Private Limited

..... Respondent/Corporate Debtor

And in the matter of:

New India Colour Company Limited

A-29, Block B-1 Extension,

Mohan Co-Operative

Industrial Estate, Mathura

Road, New Delhi -110044

.... Applicant/Operational Creditor

VERSUS

Mr. Vimal Kumar

Resolution Professional of the Corporate Debtor

...Respondent 1



Mr. Amit Kumar Gupta

...Respondent 2

Mr. Prem Kumar Bhardwaj

...Respondent 3

Mr. Samer Duggal

...Respondent 4

Mr. Sharad Duggal

...Respondent 5

Mr. Sameer Bhardwaj

...Respondent 6

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

For the Applicant:

Mr. Manish Raghav and Mr. Rohit Gour,
Advs.



ORDER

PER- BACHU VENKAT BALARAM DAS, MEMBER
(JUDICIAL)

Order Pronounced on: 09.05.2023

1. This is a Contempt Petition filed under Rule 11 & 34 of NCLT Rules, 2016 read with Section 425 of the Companies Act, 2013 and Section 10 and 12 of Contempt of Court Act, 1971 for initiating contempt proceedings against all the Respondents. This Tribunal vide order dated 09.02.2023 reserved the order on the question of issuing notice in the present petition
2. The petitioner in the petition has made the following averments:
 - i. That the Respondent No 1 is the Resolution Professional, Respondent No 2 is the Director of M/s Orator Marketing Private Limited, Respondent No 3 to 6 are the Ex- Directors of the Corporate Debtor.
 - ii. That Respondent No 2 to 6 entered into criminal conspiracy and filed this Section 7 petition before this Tribunal by executing forged and fabricated documents being loan



agreement dated 20.1.2018 which was neither stamped nor registered, assignment deed dated 01.09.2018 and other documents.

- iii. That all the Respondents have given the impression that the sale of the factory premises, which was mortgaged to Tata Capital Limited, was a Sale under the SARFESI Act, 2002. The above facts are false, concocted, and sung in chorus to mislead the Tribunal by the alleged contemnors. That because Respondent No.2 is making such a false and misleading statement and thereby interfering in the administration of justice, he is liable to be punished for Contempt of the Court.
- iv. That the Plant and machinery were sold at a much lower value than the book value, and a total loss of 118.25 lakh has been made. Contemnor No. 1 has explained that the Plant and Machinery value has depreciated due to a fire in factory premises on 09.01.2021. It was further stated by Contemnor No.1 that there was a deduction of Rs. 4.53 lakhs due to a delay in handing over possession of the Plant and machinery which was agreed to be sold for Rs.



100 lakhs. Contemnor No 1 has pointed out that the fire which allegedly took place on 09.01.2021 surprisingly had diminished and depreciated the value of the Plant and machinery almost 13 months before it broke out. Such long-distance effect of fire before it takes place is unheard off.

- v. That Samtex Desinz Private Limited, represented through its director, never contested. It is pertinent to mention that this Hon'ble Tribunal and Hon'ble NCLAT dismissed the application of Orator Marketing Private Limited in view of the prevailing Law that a Loan without interest cannot be termed a debt. It is submitted that by surrendering and not contesting the collusive petition, it was ensured that the application is allowed immediately and without any hindrances.
- vi. Further, COC, of which M/s Orator Marketing Private Limited has a 100 per cent voting share, declined a forensic audit.
- vii. That from the aforementioned facts, it is established prima facie that the contemnor No. 2 to 6 conspired, forged and



fabricated documents, tendered false affidavit, misled the Hon'ble Tribunal and therefore are guilty of the Contempt

3. We have heard the submissions made by the petitioner and have gone through the petition on length.

4. Civil Contempt and Criminal Contempt have been defined under the Contempt of Courts Act, 1971 under section 2(b) & 2(c) of the Act respectively. The said Act defines the civil contempt as willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to the Court. Criminal Contempt means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

- (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
- (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or



(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

5. It is observed that serious allegations of fraud and forgery have been made by the petitioner. However, this adjudicating authority cannot decide whether fraud or forgery has been committed or not. Moreover, the petitioner has failed to prove without any reasonable doubt that the fraud and forgery has been committed by the alleged contemnors. Hence, we do not find that it is a fit case to admit the motion and to issue a notice upon the alleged contemnors.

6. In view of the above, we hereby dismiss the Contempt Petition filed by the petitioner.

Let copy of the order be served to the parties.

Sd/-
(Rahul Bhatnagar)
Member (Technical)

Sd/-
(Bachu Venkat Balaram Das)
Member (Judicial)