



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
COURT-I
KOLKATA**

**Contempt Application (I.B.C.) No. 17/KB/2022
IN
C.P (I.B) No. 701/KB/2017**

*An application under Section 425 of the Companies Act, 2013 read with
Rule 11 of the NCLT Rules, 2016*

In the matter of:

Mr. Suresh Narayan Singh

...Applicant

Versus

**Mr. Anish Agarwal, Resolution Professional of Tayo Rolls Limited
(presently under CIRP)**

...Respondent/Contemnor

Date of pronouncing the order: 21/08/2023

Coram:

Rohit Kapoor : **Member (Judicial)**
Balraj Joshi : **Member (Technical)**

Appearances (through video conferencing):

For the Applicant :Mr. Akhilesh Kumar Srivastva, Advocate
:CA Ramesh Kumar Kusbaha

For the Resolution Professional :Mr. Rishav Banerjee, Advocate
Mr. R. Lakhmani, Advocate
Mr. S. Makkar, Advocate
Mr. A. Agarwal, Advocate

ORDER

Per Rohit Kapoor, Member (Judicial)

1. This Court convened through hybrid mode.

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2. The instant application has been filed by the applicant seeking initiation of contempt proceeding against the Respondent for non compliance of the order dated 11.02.2022 passed by this Adjudicating Authority in I.A (I.B) No. 460 /KB/2021 and also for wilfully and deliberately disobeying the order of the Hon'ble NCLAT, New Delhi dated 28/04/2022 in Company Appeal (AT) (Insolvency) No. 457 of 2022 wherein the Applicant had prayed for payment of their Provident Fund amount which has been practically confiscated by the Corporate Debtor after declaration of Moratorium and the suspension of the erstwhile Board of the Corporate Debtor.
3. The grounds seeking initiation of contempt proceedings are summarized as hereinafter:
 - a. The Resolution Professional has failed to comply the order passed by this Adjudicating Authority on 11th February, 2022
 - b. The Resolution Professional deliberately failed to comply the order of this Adjudicating Authority by orally stating that the Adjudicating Authority has not specified how much amount was to be paid despite the workmen requesting formally for release of the PF amount on 12.02.2022
4. The Resolution Professional failed to release the PF amount and wrongfully issued a notice directing the workmen to apply for 100% of their own contribution and 50% of the contribution of the employer without any such authority in law. He had also prescribed a format to apply and directed the workmen to apply before 01.08.2022 as if the same was part of the resolution process for which the RP was appointed by this Adjudicating Authority.
5. The Resolution Professional is acting with the authority not vested in him.

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6. The Resolution Professional is forcing the workmen to accept the illegal and motivated Resolution Plan.
7. The Resolution Professional in connivance with M/s TATA STEEL is desperate to misappropriate the 350 acres of land of the Corporate Debtor.
8. The Workmen filed their claims in the format of the Corporate Debtor. However the Resolution Professional has failed to comply the directions of this Adjudicating Authority as mentioned above.
9. Only 14 workmen have been released part payment of their dues. Therefore, there is a violation of the order dated 11.02.2022 passed by this Adjudicating Authority.
10. Reply Affidavit has been filed by the Resolution Professional. The significant paragraphs of the same are reproduced as hereunder:
 - a. Contempt Application appears to be for alleged non-compliance of an order dated 11th February, 2022 passed in IA (IB) No. 460/KB/2021, the Petitioner whereof was Mr. Suresh Narayan Singh. However, the Contempt Application has been filed and affirmed by one Mr. Ajay Kumar Sharma who is not related to the present case. The said Mr. Ajay Kumar Sharma has no locus standi and/or authorization to prefer the captioned Contempt Application.¹
 - b. All aspects pertaining to Provident Fund (PF) in respect of the Corporate Debtor's employees including the PF amounts accumulated in the name of such employees rest with one Tata Yodogava Limited Provident Fund Trust. The said Trust was created by the Corporate Debtor, and has been functioning as an

¹ Para 4 of the Reply Affidavit

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alternative mechanism to the Employees Provident Fund Scheme, 1952. All employees of the Corporate Debtor are members of the said Trust Fund. All aspects pertaining to PF of the employees of the Corporate Debtor are governed by the rules and regulations of the said Trust.²

c. The withdrawal of amounts is permissible only for eligible employees up to certain specified limits and under certain specified circumstances, some of which circumstances are given below as examples:

- i.withdrawal for housing purposes;
- ii.withdrawal for illness;
- iii.withdrawal for marriage of self/daughter/dependents/siblings;
- iv.withdrawal for post matriculation education;
- v.withdrawal for physically handicapped workers;
- vi. withdrawal for ceremonies such as thread ceremony, shraadh ceremony, mundan etc.;
- vii.withdrawal for other special circumstances as stated in the said Rules³

d. The rules of the said Trust require any employee desirous of withdrawing PF amounts to make an application prescribed form stating inter alia the amount required to be withdrawn, the reason/circumstances warranting such withdrawal, and proof of eligibility in support of such withdrawal amongst other information. A copy of the prescribed application form for withdrawal of PF amounts is annexed hereto and marked with the Letter "A". Such application forms have been made available to the workmen at large. Such application forms are also available

² Para 5 of the Reply Affidavit

³ Para 6 of the Reply Affidavit

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- with the Personnel department of the Corporate Debtor, i.e. the department concerned with the employees' PF related affairs.⁴
- e. The Applicant has also filed an execution petition being I.A. 50/KB/2023 for purported execution of the said order dated 11.02.2022.⁵
- f. In the Contempt Application, there is not even a single specific instance pointed out in respect of any worker who applied for withdrawal of PF amounts but was unfairly refused such withdrawal despite the same being permissible under the Trust Rules. In fact, the same would not be possible since all applications for withdrawal of PF money have been liberally dealt with as per the Trust Rules, and withdrawals have been allowed within permissible limits.⁶

Therefore there is no contempt on the part of the Respondent.

11. All the allegations of the applicant are incorrect.

Analysis

12. Heard the Ld. Counsel appearing for the parties and perused the records.
13. While dealing with the contempt petition and averments therein, we refer to the judgment of the Hon'ble Supreme Court of India in the matter of Rama Narang v. Ramesh Narang & Ors.⁷ Relevant paragraphs of the same are reproduced hereunder:

“86. Apart from that, for bringing an action for civil contempt, the petitioner has to satisfy the court that there has been a wilful disobedience of any judgment, decree, direction, order, writ or other

⁴ Para 7 of the Reply Affidavit

⁵ Para 15 of the Reply Affidavit

⁶ Para 16 of the Reply Affidavit

⁷ (2021) 15 Supreme Court Cases 338 decided on January 19, 2021

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process of the court. It will be relevant to refer to para 9 of the judgment of this court in *Niaz Mohammad v. State of Haryana*⁸

'9. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act") defines "civil contempt" to mean 'wilful disobedience to any judgment, decree, direction, order, writ or other process of a court ...'. Where the contempt consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the court for initiating proceeding for contempt against the alleged contemnor, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under the Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemnor should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemnor is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemnor is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the court may not punish the alleged contemnor.'

⁸ [*Niaz Mohammad v. State of Haryana*, (1994) 6 SCC 332]

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87. It can thus be seen that this Court has held that the contempt proceeding is not like an execution proceeding under the Code of Civil Procedure. It has been held that though the parties in whose favour an order has been passed is entitled to the benefits of such order, but the Court while considering the issue as to whether the alleged contemnor should be punished for not having complied with and carried out the directions of the Court has to take into consideration all facts and circumstances of a particular case. It has been held that is why the framers of the Act while defining civil contempt have said that it must be wilful disobedience of any judgment, decree, direction, order, writ or other process of the Court. It has been held that before punishing the contemnor for non-compliance of the decision of the Court, the Court must not only be satisfied about the disobedience of any judgment, decree, direction, writ or other process but should also be satisfied that such disobedience was wilful and intentional. Though, the civil court while executing a decree against the judgment-debtor is not concerned and bothered as to whether the disobedience to any judgment or decree was wilful and once the decree had been passed, it was the duty of the court to execute the decree, whatever may be the consequences thereof. In a contempt proceeding before a contemnor is held guilty and punished, the Court has to record a finding, that such disobedience was wilful and intentional. It has been held that if from the circumstances of a particular case, though the Court is satisfied that there has been a disobedience but such disobedience is the result of some compelling circumstances, under which it is not possible for the contemnor to comply with the same, the Court may not punish the alleged contemnor.”

14. We find force in the argument of the Ld. Counsel appearing for the Respondent that there is no single specific instance pointed out in respect by any worker who applied for PF and the same was declined by the RP. There are general allegations which, we do not find that these constitute wilful disobedience by the Respondent named in this petition.
15. We are of the view, the stand taken by the Respondent in **para 16** of the Reply Affidavit is correct.
16. We are of the further view that the Applicant through the medium of this contempt petition is seeking execution of the order passed by this Adjudicating Authority.

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17. The pleas of the applicant when considered in the light of reply filed by the Respondent and after considering the law laid down by the Hon'ble Supreme Court of India as referred above, we do not find any merit in this application and the same is accordingly **disallowed**.

18. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi
Member (Technical)**

**Rohit Kapoor
Member (Judicial)**

This order is pronounced on the 21st day of August, 2023.

FA_LRA