

NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI BENCH (COURT-II)

Contempt Petition No. CA/11/2021
IN
Company Petition No. 894/ND/2019

IN THE MATTER OF:

Registrar NCLT

...Complainant

Versus

**Mr. Manoj Kumar Singh, IRP
Palm Developers Pvt. Ltd.
203, 2nd Floor, 10 Sikka Complex
Community Centre, Preet Vihar
New Delhi-110092**

...Respondent

AND IN THE MATTER OF:

M/s. Ram Niwas & Sons

...Operational Creditor

Versus

M/s. Palm Developers Pvt. Ltd.

....Corporate Debtor

SECTION :425 of The Companies Act, 2013

Order Delivered on : 17.01.2022

CORAM :

**SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)
SH. L. N. GUPTA, HON'BLE MEMBER (T)**

PRESENTS:

For the Applicant : Adv. Raghavendra M. Bajaj

For the Respondents : Adv. Barun Kumar Sinha, Adv. Arvind Kumar

ORDER

BY ORDER OF THE BENCH

The present proceeding is arising out of the Suo-Motu cognizance taken by this Adjudicating Authority vide order dated 13.07.2021 passed in the matter of Insolvency and Bankruptcy Board of India vs. Mr. Manoj Kumar Singh, IRP, wherein a show cause notice was issued to Mr. Manoj Kumar Singh, the erstwhile IRP of M/s. Palm Developers Pvt. Ltd (hereinafter referred to as '**Respondent**') that as to why the Contempt proceedings shall not be initiated against him for violation of the directions given vide order dated 07.09.2020 passed by this Adjudicating Authority.

2. To put succinctly, the facts of the case are that the Operational Creditor, M/s. Ram Niwas & Sons filed an Application bearing No. (IB)-894(ND) 2019 under Section 9 of IBC, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely, M/s. Palm Developers Private Limited. The Adjudicating Authority vide order dated 27.01.2019 had initiated the CIR Process against the Corporate Debtor and appointed Mr. Manoj Kumar Singh, IP as the IRP of the Corporate Debtor.

3. That during the pendency of CIRP of the Corporate Debtor, the Insolvency and Bankruptcy Board of India (IBBI) preferred an Application bearing no. IA-1742 of 2021 with a prayer *to replace Mr. Manoj Kumar Singh as the IRP with another Insolvency Professional from the list of Insolvency*

Professionals. That the said IA was allowed by this Adjudicating Authority vide order dated 13.07.2021 and, inter alia, with the following directions passed against the Respondent:

“22. Since Mr. Manoj Kumar Singh, IRP has failed to give any cogent reasons that as to why no steps were taken by him to carry forward the CIR process of the Corporate Debtor in accordance with the provision of the IBC, 2016 despite the order of this Bench dated 17.09.2020 and accordingly, this Bench issues show cause notice to him as to why the Contempt Proceedings shall not be initiated against him. Let the reply be filed by him within 02 weeks from today. List the matter on 02.08.2021. The Registry is directed to allot the case number to the Contempt Proceedings. The Bench Officer is directed to communicate the copy of this Order to Mr. Manoj Kumar Singh, IP immediately..”.

4. Before proceeding further, it is clarified that the date of the order referred to in the aforesaid directions is indeed 07.09.2020, which due to typographical error got reflected as 17.09.2020.

5. That during the course of hearing on 18.08.2021, it was stated by the Ld. Counsel appearing for the Respondent that he has preferred an Appeal against the order of this Adjudicating Authority dated 13.07.2021 before the Hon’ble NCLAT, which has been registered as Company Appeal (AT) (Ins) No. 580 of 2021. Since the Hon’ble NCLAT vide order dated 10.08.2021 had declined to stay the proceedings, this Adjudicating Authority proceeded to hear the matter.

6. That the Respondent had filed its Reply dated 04.08.2021 to the Show Cause Notice for initiating Contempt issued by this Adjudicating Authority.

7. That the Respondent, through its reply and the submissions made during the course of hearing, has raised the issue of Jurisdiction of this Adjudicating Authority to initiate the Contempt proceedings against the Respondent Mr. Manoj Kumar Singh, IRP.

8. That the Respondent has made two-fold argument to raise the issue of Jurisdiction. On the one hand, the Respondent has stated that Section 425 of Companies Act, 2013 read with Rule 11 of NCLT Rules, 2016 cannot be invoked to initiate Contempt proceedings under the IBC, 2016 proceedings. On the other hand, it has stated that the NCLT does not have any jurisdiction to take suo-motu cognizance for the Contempt of its own order.

9. That before going into the merits of the matter, we feel it necessary to dwell upon the issue of 'Jurisdiction' as raised by the Respondent.

10. That in order to support its contentions, the Respondent has placed reliance on the Judgment of the Hon'ble NCLAT passed in the matter of **Gireesh Kumar Sanghi v. Mr. Ravi Sanghu & Ors bearing Company Appeal (AT) No. 156-167/2019 dated 02.09.2019**, the relevant extracts of which are given below:

"13. From the aforesaid provision, it will be evident that the Tribunal as also the Appellate Tribunal have been empowered with 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 in

place of High Court, it should be read as Tribunal or the Appellate Tribunal; and in place of Advocate-General, it is to be read as Law Officers as may be specified by the Central Government.

14. *Article 215 of the Constitution of India makes it clear that the High Courts are courts of record and shall have powers of such a court including the power to punish for contempt of itself, as quoted below:*

“215. High Courts to be courts of record.— Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.”

15. *However, Section 425 of the Companies Act, 2013, the Tribunal or the Appellate Tribunal has not been delegated with all the power of a Courts of record. Under Section 425, the Tribunal and the Appellate Tribunal are only empowered with powers under ‘Contempt of Courts Act, 1971’ in respect of itself as the High Court...”*

11. In view of the aforesaid Judgement, it is submitted by the Respondent that the power to initiate the Contempt of Court of its own order for Hon’ble High Courts is stipulated under Article 215 of the Constitution of India. Since the NCLT is neither a Court of record under Article 215 of the Constitution of India nor has the power to initiate Contempt of itself and hence, Section 425 of Companies Act, 2013 does not empower the NCLT to initiate Contempt of its own order.

12. That the Respondent has further placed reliance on the Judgment of the Principal Bench, NCLT passed in the matter of **Mr. K.K. Agarwal & Anr. Vs. M/s. Soni Infratech Pvt. Ltd. & Ors in CA. No. 2376(PB)2019 in (IB)-**

448(PB)/2018 dated 13.01.2020, the relevant extracts of which are reproduced below:

“As to applicability of Companies Act 2013 to IBC, whichever Companies Act 2013 Section is required to be applied to IBC, Parliament has amended each of the respective sections of Companies Act specifying which section is applicable to IBC as well. It has not been legislated anywhere in the Companies Act 2013 that Companies Act jurisdiction in toto is extended to IBC as well.

As to Section 425 of the Companies Act jurisdiction, since it has not been extended to be exercisable to the cases falling under IBC, this jurisdiction cannot be construed as applicable to the cases falling under IBC.

It is trite law that jurisdiction comes to Tribunals upon conferment, as to courts under section 9 of CPC, jurisdiction vests with courts unless courts are barred from exercising jurisdiction. Moreover, courts also, as to contempt jurisdiction, it cannot be exercised unless it is specifically conferred.

Adjudicating Authority under IBC, it has its own powers and limitations, merely by NCLT being asked to act as Adjudicating Authority, it cannot be seen as the Adjudicating Authority under IBC can exercise what all powers given to NCLT under Companies Act 2013

In view thereof, we are of the considered opinion that section 425 of the Companies Act is not applicable to IBC, therefore this application is hereby dismissed as misconceived...”

13. In the light of the aforesaid Judgment, it was submitted by the Respondent that there is no provision of initiating Contempt under IBC proceedings since Section 425 of Companies Act, 2013 does not apply to the IBC proceedings.

14. That after hearing submissions of the Respondent and perusing the Judgments placed on record, this Bench is conscious of other Judgments of subsequent dates which, in our view, need to be looked into for deciding the issue of Jurisdiction. Here, it is worthwhile to refer to the Judgment of Hon'ble NCLAT passed in the matter of **Mr. Manoj K. Daga Vs. ISGEC Heavy Engineering Limited and Others in Company Appeal (AT) (Ins) No.1113 of 2019 and I.A. No.3878 of 2019, I.A. No.516 of 2020 & I.A. No.1075 of 2020 dated 12.03.2020. [2020] ibclaw.in 266 NCLAT**, wherein the Suo Motu Contempt Proceeding was initiated by Hon'ble NCLAT:

“22.The acts prima facie disclose serious Contempt, violating mandate of law of IBC applied by Orders of Adjudicating Authority and this Tribunal and breach of undertaking given on oath, actionable as NCLT established under the Companies Act, 2013 acts as Adjudicating Authority and this Tribunal is empowered under Section 425 of Companies Act, 2013 read with enabling provisions to take action.

25.Copy of this Judgement and record of Appeal will be treated as Contempt Case to be registered as “State vs. Manoj K. Daga and Deepak Daga as these Directors who will face the contempt case. The Registry will give it a Contempt Case number and the same be listed on 7th April, 2020. Counsel for the Appellant states that on that date, Manoj K. Daga and Deepak Daga would both attend this Tribunal....”

15. Further, the Hon'ble NCLAT in its recent Judgment passed in the matter of **Shailendra Singh Vs. Nisha Malpani and Anr. in COMPANY APPEAL (AT)(INS) NO.945 OF 2020 dated 22.11.2021, (2021) ibclaw.in 528 NCLAT** has held the following :

“40. Under the I&B Code, 2016 the Adjudicating Authority (National Company Law Tribunal) adjudicates all proceedings before it and renders its decision. Just because the I&B Code does not specifically mention about the contempt provisions, it cannot be said that the ‘Adjudicating Authority’ (National Company Law Tribunal) has no powers of contempt. If one is to give such a restricted interpretation that the Adjudicating Authority (National Company Law Tribunal) has no jurisdiction of contempt, then its orders cannot be implemented and in fact, the I&B Code will remain in ‘Black Letters’ without a teeth to bite, in the considered opinion of this Tribunal.

41. Besides the above, as per Section 425 of the Companies Act, 2013 it is clear that the ‘Contempt proceedings’ can be exercised by the ‘National Company Law Tribunal’, being the ‘Adjudicating Authority’ as per Section 5(1) of the I&B Code. Also that a conjoined reading of Section 408 and 425 of the Companies Act, 2013 will unerringly point out that the power to punish for ‘Contempt’ is vested with the ‘Tribunal’ shall be while adjudicating on matter not only confine to the Companies Act, 2013 but also to matters relating to the I&B Code, 2016.

50. Although Section 5(1) of the I&B Code, 2016 defines ‘Adjudicating Authority’ for the purpose of Part II (Insolvency Resolution and Liquidation for Corporate Persons Chapter I Preliminary meaning National Company Law Tribunal constituted under Section 408 of the Companies Act, 2013 and further that the BLRC Report coupled with Statement and Objects and Reasons of the IBC Bill 2016 visualise the ‘National Company Law Tribunal’ to act as ‘Adjudicating Authority’ for the purpose of matters pertaining to I&B code, as per Section 425 of the Companies Act, 2013. The ‘Tribunal’ (i.e. NCLT) and the ‘Appellate Tribunal’ (i.e. NCLAT) have the same

‘jurisdiction’, ‘powers’ and ‘Authority’ in respect of contempt of it as the ‘High Court’ viewed in that perspective, the conclusions arrived at by the Adjudicating Authority (National Company Law Tribunal) in the impugned order by making it clear that the IBC is devoid of contempt of jurisdiction and thereby dismissing the application, leaving it open to the Appellant/Applicant to seek remedy through recourses available, are clearly unsustainable in the eye of Law and the same is interfered with by this ‘Tribunal’ in furtherance substantial cause of justice, sitting in ‘Appellate Jurisdiction’. Consequently, the Appeal succeeds...”

16. In the light of the Judgments (Supra) passed by the Hon’ble NCLAT, it is amply clear that under Section 425 of Companies Act, 2013, this Adjudicating Authority has Jurisdiction to initiate the Contempt Proceedings in the event of any violation made pursuant to the directions passed by this Adjudicating Authority under the IBC proceedings.

17. As regards to the Suo Motu power of this Adjudicating Authority to initiate Contempt proceedings, we observe that the Hon’ble NCLAT has already set a precedent by initiating Suo Motu Contempt Case in the matter of **Mr. Manoj K. Daga (Supra)**.

18. However, we would further like to examine as to whether this Adjudicating Authority has the powers to initiate Suo Motu Contempt.

19. Since the power to initiate contempt is stipulated under Section 425 of the Companies Act, 2013, therefore, it is worthwhile to visit the contents of Section 425 of Companies Act, 2013, which are reproduced 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** (70 of 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 Central Government may, specify in this behalf...”

(Emphasis supplied)

20. From the perusal of the contents of Section 425 Companies Act, 2013, it is evidently clear that this Adjudicating Authority is *having the same jurisdiction, powers and authority in respect of contempt of itself* as the Hon’ble High Courts has *and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971*.

21. That in this context, it is also worthwhile to examine the powers to initiate Contempt by other Tribunals. Here, we refer to Section 17 of The Administrative Tribunals Act, 1985, which contains the powers of Central Administrative Tribunal (CAT) to initiate contempt as stipulated under:

“17. Power to punish for contempt –

A Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 (70 of 1971) shall have effect subject to the modifications that –

(a) *the reference therein to a High Court shall be construed as including a reference to such Tribunal;*

(b) *the references to the Advocate-General in section 15 of the said Act shall be construed, -*

(i) in relation to the Central Administrative Tribunal, as a reference to the Attorney-General or the Solicitor-General or the Additional Solicitor General; and

(ii) in relation to an Administrative Tribunal for a State or a Joint Administrative Tribunal for two or more States, as a reference to the Advocate-General of the State or any of the States for which such Tribunal has been established...”

22. That from the perusal of Section 17 of The Administrative Tribunals Act, 1985, it is observed that the CAT is having the same jurisdiction, powers and authority as to what are vested with NCLT under Section 425 of Companies Act, 2013 for initiating Contempt proceedings.

23. That here, we would like to refer to the Judgment of the Hon'ble Supreme Court in the matter of **T. Sudhakar Prasad vs Govt. Of A.P. &Ors in Appeal (Civil) 5089 1998 dated 13.12.2000**, wherein the following was held about the Suo Moto powers of the CAT to initiate Contempt:

“.....It is thus clear that the Constitution Bench has not declared the provisions of Article 323-A (2)(b) or Article 323-B(3)(d) or Section 17 of the Act ultra vires the Constitution. The High Court has, in its judgment under appeal, noted with emphasis the Tribunal having been compared to like courts of first instance and then proceeded to hold that the status of Administrative Tribunals having been held to be equivalent to court or tribunals subordinate to High Court the jurisdiction to hear their own contempt was lost by the Administrative Tribunals and the only course available to them was either to make a reference to High Court or to file a complaint under Section 193, 219

and 228 of IPC as provided by Section 30 of the Act. The High Court has proceeded on the reasoning that the Tribunal having been held to be subordinate to the High Court for the purpose of Articles 226/227 of the Constitution and its decisions having been subjected to judicial review jurisdiction of the High Court under Articles 226/227 of the Constitution the right to file an appeal to the Supreme Court against an order passed by the Tribunal punishing for contempt under Section 17 of the Act was defeated and on these twin grounds Section 17 of the Act became unworkable and unconstitutional. We do not find any basis for such conclusion or inference being drawn from the judgments of this Court in the cases of Supreme Court Bar Association (*supra*) or L. Chandra Kumar (*supra*) or any other decision of this Court. The Constitution Bench has in so many words said that the jurisdiction conferred on the High Courts under Articles 226/227 could not be taken away by conferring the same on any court or Tribunal and jurisdiction hitherto exercised by the High Court now legislatively conferred on Tribunals to the exclusion of High Court on specified matters, did not amount to assigning tribunals a status of substitute for the High Court but such jurisdiction was capable of being conferred additionally or supplementally on any Court or Tribunal which is not a concept strange to the scheme of the Constitution more so in view of Articles 323-A and 323-B. Clause (2)(b) of Article 323-A specifically empowers the Parliament to enact a law specifying the jurisdiction and powers, including the power to punish for contempt, being conferred on administrative tribunals constituted under Article 323-A. **Section 17 of the Act derives its legislative sanctity there from. The power of the High Court to punish for contempt of itself under Article 215 of the Constitution remains intact but the jurisdiction power and authority to hear and decide the matters covered by sub-section (1) of Section 14 of the Act having been conferred on the administrative tribunals the jurisdiction of the High Court to that extent has been taken away and hence the same jurisdiction which vested in the High Court to punish for contempt of itself in the matters now falling within the jurisdiction of tribunals if those matters would have continued to be heard by the High court has now been conferred on the administrative tribunals under Section 17 of the Act. The jurisdiction is the same as vesting in the High Courts under Article 215 of the Constitution read with the provisions of the**

Contempt of Courts Act, 1971. The need for enacting Section 17 arose, firstly, to avoid doubts, and secondly, because the Tribunals are not courts of record.

Contempt jurisdiction is exercised for the purpose of upholding the majesty of law and dignity of judicial system as also of the courts and tribunals entrusted with the task of administering delivery of justice. Power of contempt has often been invoked, as a step in that direction, for enforcing compliance of orders of courts and punishing for lapses in the matter of compliance. The majesty of judicial institution is to be ensured so that it may not be lowered and the functional utility of the constitutional edifice is preserved from being rendered ineffective. The proceedings for contempt of court cannot be used merely for executing the decree of the court. However, with a view to preserving the flow of the stream of justice in its unsullied form and in unstinted purity willful defiance with the mandate of the court is treated to be contemptuous. Availability of jurisdiction to punish for contempt provides efficacy to functioning of the judicial forum and enables the enforcement of the orders on account of its deterrent affect on avoidance. Viewed from this angle the validity of Section 17 of the Act is protected not only by sub-clause

(b) of Clause (2) of Article 323-A but also by sub-clause

(g) thereof.

*For the foregoing reasons the appeals are allowed. The judgment of the High Court is set aside. **CWP No.34841 of 1998 filed in the High Court of Andhra Pradesh laying challenge to the jurisdiction of the Tribunal to deal with its own contempt is directed to be dismissed. The Tribunal shall now proceed ahead with the proceedings pending before it as per law.** Contempt Case No.1054/1998 filed before the High Court invoking its contempt jurisdiction is directed to be transferred to the Tribunal for being dealt with under Section 17 of the Administrative Tribunals Act, 1985. Complete record of the proceedings shall be transmitted by the High Court to the Tribunal. The appeals stand disposed of accordingly. No order as to the costs....”*

(Emphasis supplied)

24. Thus, we find that the Hon’ble Supreme Court in the Judgment (Supra) has clearly held that the CAT is having the same Jurisdiction as vested in the

High Courts and has power to initiate contempt of its own. Since the Legislature has given the similar powers to CAT under Section 17 of the Administrative Tribunals Act, 1985 and NCLT under Section 425 of the Companies Act, 2013 with regard to initiating contempt of its own, in our view, the law laid down by Hon'ble Supreme Court in **T. Sudhakar Prasad case (Supra)** shall apply to the NCLT as well.

25. In sequel to the aforesaid discussion, we are of the firm view that this Adjudicating Authority is having jurisdiction under Section 425 of Companies Act, 2013 to initiate Suo Motu Contempt arising out of the IBC proceeding. Hence, we are inclined to proceed ahead with merits of the present case.

26. As regards to the merits of the matter, this Bench observes that the Respondent in its Reply & written submissions and the Ld. Counsel appearing for the Respondent has reiterated the same grounds and reasons for not convening the meeting of CoC for carrying forward the process of CIRP which were already raised and recorded in our Order dated 13.07.2021.

27. It is averred by the Respondent on "submission on merits" in its Written Submissions that:

"5. There is no wilful and deliberate violation of the order dated 07.09.2020, it is submitted that the Respondent has utmost respect for majesty of law and for the order of this Hon'ble Adjudicating Authority being IRP appointed by this Hon'ble Adjudicating Authority, the IRP is under statutory obligation to perform this duties within

the four walls of the IBC and in accordance with order passed by this Hon'ble Adjudicating Authority, therefore, the Respondent kept in mind the order dated 28.02.2020 read with modification order dated 07.09.2020 and came to the conclusion unless the constitution of CoC is ascertained by this Hon'ble Adjudicating Authority, which is subject matter of dispute in IA No. 1610 of 2020, further any agenda was also restrained to the put up for vote either physically or online, therefore, the Respondent did not proceed to constitute fresh CoC with Class Of Creditors in terms of Rule 16 (B). Since, Rule 16(B) also puts a rider to constitute CoC with the Class of Creditors. Since, the rider in Rule 16(B) is subject matter of dispute in IA No. 1610 of 2020, therefore, in the clearcut order dated 28.02.2020 read with order dated 07.09.2020. It is appropriate for Respondent to wait for outcome IA No. 1610 of 2020. Further, the IRP, thus there was no wilful and deliberate violation of order of this Hon'ble Adjudicating Authority..."

28. Further, the Respondent has submitted the same explanations for not conducting CoC, which have already recorded in Para 7 of the Order dated 13.07.2021 of this Adjudicating Authority. The Para 7 of Order dated 13.07.2021 is reproduced below:

"7. That the Respondent/IRP has filed its Reply & Written Submissions and opposed the prayers made by the IBBI by submitting the following :

(i) That the present Application filed under Section 60(5) of IBC 2016 is not maintainable since the aforesaid Application is preferred against the IRP and not against the Corporate Debtor, which is not the purport of Section 60(5) of the Code. Further,

(ii) That the replacement of IRP sought by the IBBI is contrary to the provisions of Section 16(5) of IBC 2016. It is added that the tenure of the IRP can be cut short only by procedure established by law. The proceeding for inspection

initiated under IBBI (Inspection and Investigation) Regulations, 2017 is underway.

(iii) That the Covid -19 Pandemic has been the root cause for delay in disposal of IA No. 1610 of 2020 and other Applications filed by the IRP. Therefore, the delay in disposal of the IA No.1610 of 2020 and the consequent delay in the CIRP cannot be attributed to the IRP by the IBBI for seeking his removal.

(iv) That as per the timelines prescribed in the Code, the CIRP is to be concluded within a period of 330 days including any litigation period. In the present matter, the CIRP was initiated on 27.01.2020 and further progress was stayed on 28.02.2020 by this Tribunal. IRP has moved an application before this Tribunal praying for extension of time vide IA No. 1468 of 2021.

(v) That the respondent/IRP has been performing his statutory duties after the Order date 07.09.2020 of this Tribunal, viz.,

- a. Visiting project site on regular basis to preserve and protect the assets of the corporate debtor.*
- b. Continuing security services without finance. Now, Security agency has given termination notice to not to provide security services w.e.f. 17.05.2021.*
- c. Liaising with electricity department for restoration of electricity connection but they are demanding their previous payment.*
- d. Regularly updating the creditors about the CIRP process, responding their query/concern, receiving and collating the claims submitted by creditors.*
- e. Continuing CIRP since 27.01.2020 without any finance especially when IRP is not allowed to give instruction to financial institution for debit balance, raise interim finance, change the term of auditor to conduct audit for the period from April 1, 2019 to 27.01.2020 and from 28.01.2020 to March 31, 2020 and so on, and change in management*

(vi) That the he IBBI has failed to point out and plead any specific provision of the Code or the regulations of which the

IRP has been guilty of allegedly violating. Pleadings are the cornerstone of submissions and without having specifically pleaded any violation, the IRP cannot reply to the same....”

29. That in its pleadings, the Respondent has placed reliance upon the following Judgments of the Hon’ble Supreme Court:

i) **Mohd. Iqbal Khanday Vs. Abdul Majid Rather dated 16.04.1994 (1994) AIR 2252:**

“13. Having regard to the above, we have got to balance the dignity of the Court in requiring obedience to its orders as against the performance of an contrary to rules compelled by the court’s direction.

14. The law of contempt is based on sound public policy by punishing my conduct which shakes the public confidence in the administration of justice. The order dated 21.09.1992 while directing notice also required the appellant to accord promotion to the respondent as Associate Professor. It requires to be noticed here that there is the main prayer in the writ petition itself. In such circumstances, the correctness of such an interim order is open to serious doubt. For a moment, it is not to be understood that the court has no power to pass such an order but the question is whether while granting such interim reliefs the discretion of the court has been correctly exercised? If the writ petition is ultimately dismissed, the respondent would have gained an undue advantage of getting a promotion undeservedly. But we are not on the merits of the interim order.

15. Right or wrong, the order has been passed. Normally speaking, it cannot be gainsaid that the order ought to have been obeyed but it appears that there are insuperable difficulties in implementing the order. First is that the post of Associate Professor, according to the respondent, is a selection post. Secondly, the mere seniority, even if that is assured in favour of the respondent, would not be enough to gain such a promotion. Thirdly, the specific order of the Government was to exclude the period of deputation on foreign assignment from reckoning the duration of the teaching experience of the

respondent. Therefore, the respondent did not possess the requisite qualification. Fourthly, such necessary qualifications seem to be mandatory under the rules. That being the position to accord such a promotion, will be violative of the rules. Fifthly, the promotion could be granted only by the Public Service Commission and not by the appellant...”

ii) **Ashok Paper Kamgar Union & Ors.Vs. Dharam Godha and Ors.**

dated 05.09.2003 (2003) 11 SCC 1:

“17. Section 2(b) of Contempt of Courts Act defines 'civil contempt' and it means willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of undertaking given to a Court. 'Wilful' means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the Court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extra ordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case. The facts mentioned above show that none of the respondents to the petition can be held to be directly responsible if the Scheme which had been formulated by Government of India on 28.06.1996 and had been approved by this Court by the order dated 08.07.1996 could not be implemented in letter and spirit as many factors have contributed to the same. The reasons given for non inclusion of Shri Umadhar Prasad Singh in signing of the agreement appear to be quite plausible. NCFL has undoubtedly not discharged its liability of making payment of its entire liability of Rs. 6 crores. However it has come out with a case that some additional expenditure has been incurred in running the unit. It is not

possible to get the complete financial picture only on the basis of the affidavits filed in the present petition. On the material on record, therefore, it is not possible to hold that the charge of having committed contempt of Court on account of alleged non-compliance of the orders passed by this Court on 08.07.1996, 01.05.1997 and 31.07.2000 has been established against any one of the respondents...”

iii) **Kanwar Singh Saini Vs. High Court of Delhi in Criminal Appeal**

No. 1798 of 2009 (Sup. Court) dated 23.09.2011:

“1. ‘Liberty’ - the most cherished fundamental right, a basic human right, a “transcendental”, inalienable, and ‘primordial’ right, should not be put in peril without following the procedure prescribed by law and in a casual and cavalier manner. Instant case is an example where all proceedings in the suit as well as under the Contempt of Courts Act, 1971, (hereinafter called as ‘Act 1971’), have been taken without adverting to the procedure known in law.

25. The contempt proceedings being quasi-criminal in nature, the standard of proof requires in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the Criminal Jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The case should not rest only on surmises and conjectures.

In Debarata Bandopadhyay & Ors. Vs. The State of West Bengal & Anr., AIR 1969 SC 189, this Court observed as under:

“A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be

punished..... Punishment under the law of Contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged....”

(Emphasis added)

iv) **Gyani Chand Vs. State of Andhra Pradesh in Criminal Appeal**

No. 5728 of 2005 (Sup. Court) dated 20.09.2016:

“10. Section 2(b) of the Contempt of Courts Act, 1971 reads as under:

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

11. Upon perusal of the above mentioned definition of “civil contempt”, it is very clear that so as to hold somebody guilty of contempt of court, the concerned person must have willfully disobeyed any judgment, decree, direction, order, writ or any other process of a court or should have willfully committed breach of an undertaking given to a court.

12. In the instant case, from the facts stated hereinabove, it is crystal clear that the appellant had no intention of committing breach of the undertaking given to the court. It was physically impossible for the appellant to produce the documents as the documents had already been given by him to his mother, on whose behalf he had collected the same from the court and the said documents had been subsequently destroyed because of a natural calamity. In our opinion, after knowing the above stated facts, the court should not have directed the appellant to produce the documents because it was impossible for the appellant to produce the documents. It would not be fair on the part of a court to give a direction to do something which is impossible and if a person has been asked to do something which is impossible and if he fails to do so, he cannot be held guilty of contempt...”

v) **Niaz Mohammad & Ors Vs. State of Haryana & Ors. dated 20.09.1994 AIR 1995 SC 308:**

"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 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 Niaz Mohammad Vs. State of

Haryana on 20 September, 1994 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.

10. *In the present case, there is no specific direction in the aforesaid judgment of this Court dated 2-6-1988 in the connected writ petition, to pay any particular amount to the instructors. This Court has simply decided the question as to whether they are entitled to the scale of pay which has been given to squad teachers. Having decided that question in favour of the instructors, this Court directed that arrears be paid to the instructors w.e.f. their respective dates of appointments, treating them on a par with the squad teachers. This direction will involve payment of about 28 crores of rupees was neither known to the Court nor to the parties to that proceeding. As such, this Court is now entitled to examine the question as to whether in the special facts and circumstances of the present case, the respondents should be punished for having committed contempt of this Court. In the case of Dushyant Somal v. Sushma Somal⁶ this Court said: (SCC p. 281) "Nor is a person to be punished for contempt of court for disobeying an order of court except when the disobedience is established beyond reasonable doubt, the standard of proof being similar, even if not the same, as in a criminal proceeding. Where the person alleged to be in contempt is able to place before the court sufficient material to conclude that it is impossible to obey the order, the court will not be justified in punishing the alleged contemnor."*

In Halsbury's Laws of England, 4th Edn., Vol. 9, para 53, p. 34, it has been said:

"Although contempt may be committed in the absence of wilful disobedience on the part of the contemnor, committal or sequestration will not be order unless the contempt involves a degree of fault or misconduct."

It has been further stated:

“In circumstances involving misconduct, civil contempt bears a twofold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the State, a penal or disciplinary jurisdiction to be exercised by the court in the public interest.”

11. *Taking all facts and circumstances into consideration, we are satisfied that in the facts and circumstances of the present case, there is no wilful disobedience on the part of the respondents in complying with the direction given by this Court in the aforesaid judgment. It cannot be disputed that when the aforesaid direction was given, this Court was not conscious that the direction had created a liability for payment of about 28 crores of rupees, as arrears to the instructors in the Adult and Non-formal Education Scheme under the Education Department in the State of Haryana. Out of that amount about 20 crores of rupees have already been disbursed for different periods to the instructors. In this background, it is not possible + hold that respondents have committed contempt of this Court, for which they ought to be punished by this Court. Accordingly, all the petitions including 'AT (C) Nos. 401 and 784 of 1989 are dismissed. 6 (1981) 2 SCC 277: 1981 SCC (Cri) 413 : AIR 1981 SC 1026..”*

vi) **K.L. Arora Vs. S.S. Prasad & Anr. dated 23.09.1999 (2000) 10**

SCC 89:

“1. This contempt Petition has been filed on the allegation that the order of this Court dated 4.12.1996, directing payment of compensation has not been complied with. Pursuant to the notice issued by this Court, a showcase has been filed clearly indicating therein that the applicant is facing a departmental proceeding on the allegation of misappropriation of huge funds of the Company and until and unless that departmental proceeding is concluded, question of making any payment pursuant to the order of this Court would not arise. In view of

the stand taken by the Management in the show cause filed, we see no justification for initiating a contempt proceeding, as in our view the non-payment of the alleged due is not on account of any deliberate violation of the Court's orders, but on account of the pendency of a departmental proceeding....”

vii) **Avishek Raja & Ors Vs. Sanjay Gupta in Contempt Petition (C)**

No. 411 of 2014 (Sup. Court) dated 19.06.2017:

“22. From the stand adopted by the newspaper establishments in the various counter affidavits filed; from the statements made in the reports submitted by the Labour Commissioners of different States from time to time and also from the written arguments filed and the oral submissions advanced it is clear that part implementation/non-implementation of the Majithia Wage Board by the concerned newspaper establishments is on account of what the said establishments have perceived to be the scope and ambit of the Majithia Wage Board Award as approved and notified by the Central Government, the challenge to which has been dismissed by this Court Judgement dated 07.02.2014 passed in Writ Petition No. 246 of 2011. The stand taken for what is alleged to be non-implementation or partial implementation of the Award, as may be, having clearly stemmed from the understanding of the Award of the concerned newspaper establishments in a particular manner, it is our considered view that the said establishments cannot be held to have wilfully disobeyed the Judgment of this Court dated 07.02.2014 passed in Writ Petition No. 246 of 20211. At best, the default alleged has taken place on account of a wrong understanding of the Award as upheld by this court. This would not amount to wilful default so as to attract the liability of civil contempt as defined under Section 2(b) of the Contempt of Court Act, 1971. The default alleged though is unmistakably evident to us, in the absence of any wilful or deliberate intention to commit the same cannot make any of the newspaper establishments liable for contempt. On the other hand, they are entitled to one more

opportunity to implement the Award in its proper spirit and effect in the light of what we now propose to say....”

30. We have heard the submissions of Ld. Counsel appearing for the Respondent and perused his Reply, Written Submissions and Judgments placed on record. It is observed by the Bench that the Respondent has broadly adopted the same arguments, that were raised at the time of hearing of the IA-1742 of 2021 filed by the IBBI for replacement of the IRP including the ground of alleged ambiguity in the order dated 07.09.2020 and restriction in conducting the meeting of the CoC.

31. That this Bench vide its order dated 13.07.2021 has already dealt with this issue in detail and concluded that there was no ambiguity in the order dated 07.09.2020. The relevant portion of the said order is reproduced below:

“13. That on a specific query raised by this Bench regarding furtherance of the CIR process or convening CoC meetings after the order of this Adjudicating Authority dated 07.09.2020, Ld. Counsel appearing for the IRP submitted that no meeting of CoC has been convened post the order dated 07.09.2020. He further submitted that there was an ambiguity in the order dated 07.09.2020. On a further query raised by this Bench whether they had preferred any application before this Adjudicating Authority for seeking clarification on the so-called ambiguity in the order 07.09.2020, the Ld. Counsel for the IRP replied that no such step was taken.

14. That in the light of the above submission, we go through the order of this Adjudicating Authority dated 07.09.2020, which inter alia, records the following:

*“The Registry is directed to list IA 1610/2020 for the purpose of hearing. It is made clear that the order dated 28th February 2020 is hereby modified to the extent that **the IRP is allowed to proceed in the matter in accordance with the***

provisions of the IBC. However, he is restrained from declaring the status of members of Respondents in IA 1610 of 2020.”

*Thus, vide order dated 07.09.2020, this Adjudicating Authority has made it clear that the order dated 28th February 2020 is hereby modified to the extent that the IRP is allowed to proceed in the matter in accordance with the provisions of the IBC. **We, therefore, find no ambiguity in the order.***

15. That further, we are of the firm view that the dispute about the status of two Corporate Guarantors cannot be taken as ground to stall the entire CIR Process especially when (a) there are other Financial Creditors present, who have filed their claims, whose claims are verified and who have been found eligible to be part of the CoC, and (b) this Adjudicating Authority vide its order dated 07.09.2020 has made it clear to allow the IRP to proceed in the matter in accordance with the provisions of the IBC.

16. That the Respondent/IRP has not been able to give any cogent reasons for not being able to carry forward the CIR process and as to why no meeting of CoC with the remaining Financial Creditors could be convened after the order dated 07.09.2020...”

(Emphasis added)

32. That even after the aforesaid order, this Bench has given a fresh opportunity to the Respondent to defend and file its reply as to why the Contempt Proceedings shall not be initiated against it. We observe that the Respondent has not come up with any additional explanation or raised any fresh ground as to what prevented him from conducting the meeting of CoC of the Corporate Debtor with the existing Financial Creditors/members and carrying forward the CIR process for which he was appointed and dutybound in accordance with the provisions of IBC.

33. Hence, the plea as regards to the so-called ambiguity in the order dated 07.09.2020 is not acceptable to this Adjudicating Authority. Since by raising the same plea, the Respondent has been trying to seek review of the order dated 13.07.2021, which is not permissible.

34. That the term “civil contempt” is defined under Section 2 (b) of the Contempt of Courts Act 1971, which reads as under -

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

35. That in order to examine whether there is any wilful disobedience of order dated 07.09.2020, it is necessary to re-visit the records of the IA-1742 of 2021 filed by the IBBI in which the order to issue the Show Cause Notice to the Respondent was passed by this Adjudicating Authority.

36. That the IBBI (Applicant of IA-1742 of 2021) has referred to one email dated 01.03.2021 (reproduced below) written by the Respondent to IBBI, wherein he has given the details of the progress of CIR Process of the Corporate Debtor M/s Palm Developers Pvt. Ltd:

Fwd: Palm Developers Pvt Ltd. - CIRP Updates

Annexure A-4

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From : MANPREET KAUR <manpreet.k92@ibbi.gov.in>
Subject : Fwd: Palm Developers Pvt Ltd. - CIRP Updates
To : Tuhina Mardi <tuhina.mardi@ibbi.gov.in>

Fri, Mar 05, 2021 05:36 PM
6 attachments

Dear Tuhina,

As discussed, PFA the trail mail.

Regards,

Manpreet

----- Forwarded Message -----

Subject: Palm Developers Pvt Ltd. - CIRP Updates
Date: Mon, 01 Mar 2021 09:01:53 +0530
From: cma.msingh@gmail.com
To: MANPREET KAUR <manpreet.k92@ibbi.gov.in>

Dear Ma'am,

Reference our telecon, regarding update in matter of M/S Palm Developers Pvt. Ltd. under CIRP.

The corporate debtor (Palm Developers) is developing a residential project having 318 units in 4 tower apartments project in Greater Noida. The Hon'ble NCLT vide its order dated January 27, 2020 allowed CIRP under section 9 on application made by operational creditor and appointed me - Manoj Kumar Singh as IRP from its list of empanelment.

The key-timelines and events are mentioned herein below for your reference: -

- CIRP order dated 27th Jan'2020 on the petition of the operational creditor.
- The appointment was made by Hon'ble NCLT Delhi which selected name of IRP from its panel (operational creditor had not named IRP in its application);
- The order copy received by IRP from registry on January 29, 2020. On the same date, Intimation sent to the suspended board of directors regarding commencement of CIRP of the Corporate Debtor.
- January 31, 2020: Public Announcement published in Financial Express (English) & Jansatta (Hindi) – Delhi NCR edition. Other steps on the same day:-
 - o Copy of Public announcement submitted on IBBI through e-mail and online update.
 - o Copy of Public announcement displayed on the Project / Site office where all functions are performed.
 - o Intimation to bankers regarding commencement of CIRP of the Corporate Debtor.
 - o Mails and letter sent to ex-management to handover documents and other affairs of Corporate Debtors, along with books of account, moveable, or immovable properties.
- February 02, 2020 -IRP filed declaration and disclosure statement as per the provisions of IBBI Regulation to Hon'ble NCLT. This was taken on record by Hon'ble NCLT on 07.02.2020.

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- IRP & his team visited the corporate office of Corporate Debtor on 31.01.2020, 03.02.2020, 05.02.2020, 06.02.2020, 10.02.2020, 11.02.2020, and 13.02.2020 to take possession of books of account, moveable and immoveable properties of the Corporate Debtor.
 - February 12, 2020 - Last date for receiving claims under regulation 12 (1) of CIRP Regulations.
 - February 20, 2020 - IRP constituted the Committee of Creditors, based on claims received which were provisionally accepted.
 - After constituting 1st COC, meeting of COC held on 26th February 2020.
 - Draft minutes of meeting circulated to Financial creditors (lenders) and to Financial Creditors (Class of creditors) through Authorized representative Mr. Sandeep Khanna on February 27, 2020 and e-voting was scheduled on February 29, 2020.
 - Based on the petition of Homebuyer, who challenged inclusion of Edelweiss & IDBI Trusteeship which together held 88% vote in 1st COC, Hon'ble NCLT vide its order dated 28th February 2020 has restrained holding of the meeting of COC or putting any agenda to vote.
 - Further hearing could not take place due to COVID/ Adjournments except an ex parte hearing on 07.09.2020. Hon'ble NCLT on its order dated 07.09.2020 modified its order dated 28.02.2020 to the extent that the IRP is allowed to proceed in the matter in accordance with the provisions of the IBC. However, he is restrained from declaring the status of Respondent in IA 1610/2020 till further orders. Hon'ble NCLT had fixed date of hearing on 09.10.2020. This order is however not clear. To convene a meeting of COC, it is necessary to constitute COC for which IRP must declare status of respondent (Edelweiss & IDBI) in IA 1610/2020. This aspect however is still under stay by the Hon'ble NCLT. Furthermore, IRP report on the constitution of the Committee of creditors also needs to be decided by Hon'ble NCLT (order attached).

Subsequently the matter was listed various times, but hearing was conducted only on three dates. The position on the subsequent dates is as under: -

- On 9.10.2020, the matter was not taken up due to paucity of time, next date of hearing 16.10.2020;
 - On 16.10.2020, the matter was not taken up due to paucity of time, next date of hearing 9.11.2020;
 - On 9.11.2020, the matter was not taken up due to paucity of time, next date of hearing 11.11.2020;
 - On 11.11.2020, the matter was not taken up due to paucity of time, next date of hearing 25.11.2020;
 - On 25.11.2020 - As per order dated 07.09.2020, registry did not list IA 1610/2020, on which hearing was to take place. Therefore, registry was directed to list IA 1610/2020, IA 1448/202 & IA 1449/2020 on 02.12.2020 (order Attached);
 - On 2.12.2020 - the matter was not taken up due to paucity of time, next date of hearing 22.12.2020;
 - On 22.12.2020 - the matter was not taken up due to paucity of time, next date of hearing 19.01.2021;
 - On 19.01.2021 - Matter heard. Applicant sought an adjournment to file an appropriate application to make necessary correction/amendment. Hon'ble listed the matter on 27.01.2021 (order attached)
 - On 27.01.2021 - the matter was not taken up due to paucity of time, next date of hearing 01.02.2021;
 - On 01.02.2021 -The matter partly heard. The matter listed on 24.02.2021;
 - On 24.02.2021 - - the matter was not taken up due to paucity of time, next date of hearing 31.03.2021.
- The order is yet to be uploaded.

IRP in the mean-time has continued to:

- Regular visit to Project offices to meet with stakeholders;
- send updates to Creditors/ Homebuyers;
- Verify & determine claims which are being filed by Home buyers;
- Liase with the electricity department for restoration of electricity. Electricity department has disconnected power due to non-payment.
- IRP has sent notices to various parties which are in receipt of advance from Corporate debtor.
- With a view to protect assets of corporate debtor, IRP continues to liase with security agencies guarding assets to seek their co-operation in continuing their services on credit till the period matter is resolved by Hon'ble NCLT.

With Regards,

CMA Manoj Kumar Singh

FCMA, IP

Insolvency Professional



37. That from perusal of the aforesaid e-mail, it is observed that the Respondent has given the following justification to the IBBI for not conducting the CoC meeting of the Corporate Debtor :

*“Further hearing could not take place due to COVID/ Adjournments except an ex parte hearing on 07.09.2020. Hon’ble NCLT on its order dated 07.09.2020 modified its order dated 28.02.2020 to the extent that the IRP is allowed to proceed in the matter in accordance with the provisions of the IBC. However, he is restrained from declaring the status of Respondent in IA 1610 of 2020 till further orders. Hon’ble NCLT had fixed date of hearing on 09.10.2020. This order is however not clear. **To convene a meeting of CoC, it is necessary to constitute CoC for which IRP must declare status of respondent (Edelweiss & IDBI) in IA 1610/2020.** This aspect however is still under stay by the Hon’ble NCLT. Furthermore, IRP report on constitution of the Committee of Creditors also needs to be decided by Hon’ble NCLT (order attached)....”*

38. That we have visited the order dated 07.09.2020 again and we find that this Adjudicating Authority has removed all the restrictions imposed vide order dated 28.02.2020 except to the extent that the Respondent was restrained from declaring the status of Respondents in IA 1610/2020 (Edelweiss & IDBI).

39. That from perusal of the email dated 01.03.2021, it is observed that the Respondent was adamant to not to convene the meeting of CoC with the prevailing members till the time the status of Respondents (Edelweiss & IDBI) in IA-1610/2020) is declared. It is a matter of fact that there was no dispute with regard to the admitted claims of the other Financial Creditors (i.e., Home Buyers), who were eligible and valid constituents of CoC of the Corporate Debtor. We find no bar and the Respondent could have convened the meeting of CoC with those prevailing members to carry forward the CIR process of the

Corporate Debtor as per the provisions of IBC. That the CoC could have been re-constituted further, if required, on the determination of the status of Respondents (Edelweiss & IDBI) in IA-1610/2020. The reasons(s) for obduracy of IRP on determination of the status of Respondents, namely Edelweiss & IDBI as pre-condition for convening COC meeting or carrying forward the CIR process of the Corporate Debtor are not clear and comprehensible.

40. Hence, we are of the view that the Respondent has not acted in accordance with the provisions of IBC, 2016 and has derailed the CIR process besides wilfully violating the directions passed by this Adjudicating Authority vide order dated 07.09.2020.

41. That the procedure of initiating the Contempt proceedings is stipulated under Section 14 of the Contempt of Courts Act, 1971. The contents of the same are reproduced below:

“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....”

42. That this Adjudicating Authority has informed the Respondent vide order dated 13.07.2021 that it is charged with the violation of the directions passed vide order dated 07.09.2020 which fulfils the ingredients of Section 14(1)(a) of Contempt of Court Acts, 1971. That this Adjudicating Authority has given adequate opportunity to the Respondent to file its reply, written submission and addressed arguments orally, which fulfils the requirement of Section 14(1)(b) (Supra) of the Contempt of Courts Act, 1971.

43. That the Respondent at any stage either orally or in writing has not made any request for transfer of matter to other Bench in accordance with Section 14(2) of the Contempt of Courts Act, 1971.

44. That the Respondent has made continuous contempt of the directions passed vide order dated 07.09.2020 from 08.09.2020 till 12.07.2021 by not conducting the meeting of CoC and not carrying forward the CIR process of the Corporate Debtor. Therefore, the contempt proceedings has been initiated within one year, which is in terms of Section 20 of the Contempt of Courts Act, 1971.

45. That the Respondent has not made any apology at any stage, therefore, the question of discharging the Respondent on this ground in terms of proviso to Section 12 of the Contempt of Courts Act, 1971 does not arise.

46. Accordingly, in view of the facts and circumstances of the case as above, we hold that the Respondent Mr. Manoj Kumar Singh IP has committed the contempt of the directions passed by this Adjudicating Authority vide order dated 07.09.2020. The Respondent is directed to appear through VC for hearing on punishment on 19.01.2022.

47. Registry to list the case on 19.01.2022.

Sd/-
(L.N.Gupta)
Member (T)

Sd/-
(Abni Ranjan Kumar Sinha)
Member (J)