



For the Respondent : Mr. Shyam Kapadia, Advocate  
**ORDER**

*Per: Justice V.G. Bisht, Member (Judicial)*

1. The present Application is filed seeking the following reliefs:
  - i. That this Tribunal be pleased to declare that the contemnors have committed contempt of this Tribunal by intentionally and willfully committing breach and acting in disobedience and defiance of the consent terms dated 09.09.2019 and order dated 13.09.2016 passed by this Tribunal.
  - ii. That contemnors be punished for having committed contempt of this Tribunal by willfully and deliberately violating the undertakings recorded in the consent terms dated 09.09.2019 and this Tribunal's order dated 13.09.2019.
  - iii. That contemnors be committed to civil prison for a period of six months as provided under the Contempt of Courts Act, 1971 for having committed contempt of this Tribunal and maximum fine/penalty be imposed as provided for in the said Act on the contemnors separately for each act of contempt by the contemnors.

**Brief backdrop of facts**

2. The Applicant No. 1 is/was the promoter of Satra Properties (India) Limited (hereinafter referred to as "SPIL"), a public limited company which is listed on the Bombay Stock Exchange and is engaged in the business of real estate development through its then subsidiary, Satra Property Developers Private Limited (hereinafter referred to as "SPDPL") (hereinafter collectively referred to as "Satra Group").
3. The Applicant No. 2 is the wife of Applicant No. 1 and the promoter of SPIL. It is pertinent to note that, vide order dated 3rd August 2020, the Company Petition No. 1632 of 2019 filed by Vistra ITCL (India) Limited & Ors. against SPIL was admitted into CIRP and Mr. Devarajan Raman came to be appointed as the Interim Resolution Professional (IRP). Vide order dated 10th August 2020, the Company Petition No. 4464 of 2019 filed by Gajendra Investment Limited against SPDPL was admitted into CIRP and Mr. Devarajan Raman came to be appointed as the Interim Resolution Professional (IRP)
4. The Contemnor No. 1 IIFL Finance Limited has now been amalgamated with India Infoline Finance Limited who is original

signatory of the consent terms and the Financial Creditor in CP. No. 175 of 2019 and CP. No. 176 of 2019 with effect from 30th March 2020 and is a Non-Banking Finance Company.

5. The Contemnor No. 1 along with its subsidiary IIFL Home Finance Limited (formerly known as India Infoline Housing Finance Limited) ("IIHFL") is mainly engaged in the financing business. Between 2009-2015, the Satra Group had availed of loan/advance facilities from the Contemnor No. 1 and its subsidiary viz IIHFL.
6. Pursuant to the said loans, India Infoline Finance Limited filed Company Petition No. 175 of 2019 against SPDPL and Company Petition No. 176 of 2019 against SPIL before this Tribunal. Pursuant to the initiation of the aforesaid proceedings, several rounds of negotiation were held between the Applicant/Petitioner, Contemnor No. 2 (Director and Promoter of the Contemnor) and other representatives of IIFL Group viz. Mr. Balaji Raghavan and Mr. Abdeali Tamabawala. The IIFL Group agreed not to pursue, and withdraw both the Company Petition Nos. 175 of 2019 and 176 of 2019 against SPDPL and SPIL respectively.
7. Accordingly, Consent Terms dated 09.09.2019 (hereinafter referred to as

"Consent Terms") came to be executed by and between the SPIL, SPDPL and the Condemner No.1, and consented by IIFL. The Consent Terms were taken on record by this Tribunal vide order dated 13.09.2019 ("**Order**") and the company Petitions were disposed of.

**Submissions made by the Applicant**

8. It is the Applicants stand that the said Consent Terms provided for the following terms:
  - a) Settlement of not just liabilities and obligations of SPDPL but also the obligations and liabilities of the Applicants.
  - b) India Infoline Finance Ltd. ("IIFL"/ "Respondent No. 1") undertook not to initiate any legal proceedings/ actions against SPIL and/or its directors and/or its promoters. IIFL was to also ensure that IIFL Home Finance Ltd. ("IIFL-HFL") does not initiate legal proceedings/ actions against SPIL and/or its directors and/or its promoters. (Clause 2(b)(v) at page 65 of Application).
  - c) SPDPL undertook to withdraw all complaints/ grievances/ representations/ proceedings initiated by them before any authority against IIFL and/or IIFL-HFL and its employees/ officers within 7 days, including letters dated 13th February, 2019 addressed to

Reserve Bank of India and BSE Ltd. (Clause 2(d) @ Pg. 66).

d) Further, IIFL inter alia undertook to withdraw criminal complaint filed by IIFL against SPDPL and related persons like the Applicants.

(Clause 3(b) @ Pg. 66)

e) Parties agreed that they shall be at liberty to pursue all recourses and actions under applicable laws and the Consent Terms, in case of violation of the Consent Terms. (Clause 6 @Pg. 68)

9. Thereafter, this Tribunal passed order dated 13th September, 2019 disposing of the Company Petition.

10. SPDPL and SPIL adhered to the Consent Terms and withdrew the complaint filed by it against IIFL with the RBI and BSE Ltd.

11. The Applicant submits that the Respondents acknowledged their obligations under the Consent Terms, the parties made a joint request for disposal of the aforementioned Company Petition in terms of the Consent Terms. (Exh. K at Pg. 187). Moreover, Mr. James Kamble of IIFL Group accepted the obligation to withdraw criminal complaints against the Applicants vide his e-mails dated 17 March, 2020 and 19 May, 2020.

**Submissions made by the Respondents**

12. The primary defenses raised by the Respondent No.1 are on the issue of maintainability. It is submitted that the present Application deserves to be dismissed on two counts, a) the Applicant does not have the locus standi to prefer the Application and b) this Tribunal has not granted its imprimatur to the consent terms dated 09.09.2019 vide order dated 13.09.2019.
13. The Ld. Counsel for the Respondent No.1 submits that the Applicants herein are the promoters of SPIL against which the Respondent No.1 had filed CP(IB) No. 175 of 2019, which was subsequently withdrawn basis the consent terms entered into between the parties.
14. The Respondent No.1 submits that that the parties to the consent terms are Respondent No.1, SPIL and SPDPL. It is argued that the Applicants are not party to proceedings under section 7 of the Code nor they are party to the consent terms. Accordingly, they do not have the locus to maintain the present application.
15. The Respondent No.1 further argues that this Tribunal has merely taken on record the consent terms while exercising jurisdiction under Section 7 of the Code to allow withdrawal of the Company Petition. Thus, the argument canvassed by the Respondent No.1 is that this tribunal has not

passed order dated 13.09.2019 whilst exercising jurisdiction as a civil court.

16. Further, to strengthen the aforesaid argument, the Respondent No.1 has further argued that this Tribunal has not granted its imprimatur to the consent terms. The order dated 13.09.2019 does not grant leave to third parties invoking contempt jurisdiction of this Tribunal in case of breach.
17. The Respondent No.1 submits that SPIL was admitted in CIRP vide order 03.08.2020. Likewise, SPDPL was also admitted in CIRP vide order dated 10.08.2020. The admission of both these entities in CIRP constitutes event of default under clause 16.1 of the RLF agreement and clause 4 of Additional Loan Facility Agreement.
18. The Respondent No.1 submits that in light of the CIRP proceedings against SPIL and SPDPL and the breach of loan agreements read with amendment agreements, Respondent No.1 reinstated criminal actions against the Applicants vide letter dated 02.12.2020.
19. The Respondent No.1 submits that it has complied with the consent terms in good faith on the other hand SPIL and SPDPL have failed to execute a Business Transfer Agreement as agreed to between the parties.
20. Lastly, the Respondent No.1 submits that the consent terms or the

amendment agreement do not reflect any undertaking on part of Respondent No.1 to the effect that no proceedings will be initiated against the personal guarantors i.e. the Applicants herein.

21. Respondent No.2 and 3 have adopted the submissions advanced by Respondent No.1. The said submissions are not reiterated herein for the sake of brevity.

### **Findings**

22. We have perused the records and heard the Ld. Counsel for the parties.
23. At the outset, we need to examine whether the Applicant herein has made out a case for initiating civil contempt under the Contempt of Courts Act, 1971 against the Respondents herein for alleged breach of Consent Terms dated 09.09.2019 filed for withdrawal of Section 7 Petition under the Code.
24. In the aforesaid premise of facts, it is useful to refer to the definition of Civil Contempt.

“Section 2(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”

25. It is clearly discernable from a plain reading of the aforesaid definition, wilful disobedience or wilful breach is the essential ingredient to constitute civil contempt.
26. Before, we proceed to examine the obligations cast on the Respondents and ascertain the alleged breaches committed by them, it is just to deal with the primary defense of maintainability raised by the Corporate Debtor which is germane to the present Application. The Ld. Counsel Mr. Kapadia appearing for the Respondent No.1 submits that the consent terms were filed pursuant to withdrawal of Section 7 Petition and this Tribunal has not granted its imprimatur to these consent terms vide order dated 13.09.2019.
27. The order dated 13.09.2019 reads as follow:
- Counsel for the parties sought leave of the Court for filing consent terms. Prayer is allowed. Consent terms are taken on record. Parties further requested for withdrawing the Petition. Prayer is allowed.*
- This Petition is dismissed as withdrawn with liberty to file a fresh Petition, in case of the breach of consent terms.*
28. The aforesaid order clearly records that in case of breach of consent terms, the parties are at liberty to file a fresh Petition. Further, it is

recorded that the consent terms are taken on record and in lieu of the said consent terms the Section 7 Petition was dismissed as withdrawn. Therefore, it cannot be said that this Tribunal has not granted its imprimatur to the consent terms as the same were taken on case file and basis the said terms the main company petition was dismissed.

29. We find force in the argument of the Respondent that this Tribunal had not granted its imprimatur to the consent terms. The proceedings before this Tribunal was in relation to initiation of Insolvency Resolution Process in the matter of SPIL and SPDPL, and not a recovery suit. The settlement of default put at rest the insolvency resolution initiation process, as existence of default is sine qua non, accordingly, this petition came to be dismissed as withdrawn in view thereof. The Order passed by this Bench in this relation explicitly records that the creditor shall have liberty to approach again in case of default in consent terms, and this Tribunal had no occasion to persuade the parties to settle, as the matter before it does not involve dispute in relation to debt, but pertains to resolution of default in relation to debt. Accordingly, we feel the

present application is not maintainable on this ground alone.

30. Coming to merits of the case, the issue before us is whether the alleged breach committed by the Respondents was willful. The Hon'ble Supreme Court in catena of judgments has clarified that the test of willful breach or disobedience has to be strictly met whilst exercising powers of contempt. The Hon'ble Apex Court in *Niyaz Mohammad and Ors vs State of Haryana and Ors 1994 6 SCC 332* while explaining willful disobedience under section 2(b) has held as under:

*“Section 2(b) of the Contempt of Court Act, 1971 (hereinafter referred to as 'the Act') defines "Civil Contempt" to mean "willful 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 the court made in favour of the 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.*

31. The Respondent No.1, pursuant to its obligations under the consent terms, issued a letter dated 25.09.2019 to the Economic Offence

Wing, Mumbai withdrawing its complaint filed against the Applicants and the Satra Group. The said letter is placed as “Exhibit-S” of the Reply, which in effect demonstrates that the Respondents did what they were required to do. Any failure on the part of EOW to take note such withdrawal or the decision of EOW to further proceed even in the light of letter dated 25.09.2019 cannot be attributed to the conduct of Respondents. Accordingly, this bench feels that no case of willful disobedience is made out. The Respondent No.1 granted an extension of 90 days on period mentioned in clause 2(a) of the consent terms to SPDPL as certain documents were yet to be executed.

32. Further, the email dated 19.05.2020 addressed by one Mr. James Kamble is also placed on record wherein it is stated that the complaints will be withdrawn on re-opening of the courts.
33. Thereafter, the Respondents submits that CIRP was initiated against SPIL vide order dated 03.08.2020 and SPDPL vide order dated 10.08.2020, which constitutes event of default under clause 16.1 of the RFL agreement and clause 4 of the Additional Loan Facility Agreement. In summation, it appears that the respondents reinstated

criminal actions against the applicants in view of breach of consent terms.

34. Since, the Respondents have not willfully breached the consent terms dated 09.09.2019, and accordingly, the petitioner has failed to meet the test to constitute civil contempt under section 2(b) of the Contempt of Courts Act, 1971.
35. In the aforesaid circumstances, IA No. **1623 of 2021 in CP(IB) 175 of 2019** is dismissed as rejected. However, the said dismissal will not come in the way of the Applicant availing the appropriate remedy.

**Sd/-**

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

26.10.2023

Priyal

**Sd/-**

**JUSTICE V.G. BISHT**  
**MEMBER (JUDICIAL)**