

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Contempt Case (AT) No. 28 of 2021**

In

I.A. no. 953 OF 2020

IN

Company Appeal(AT)(Insolvency) No. 553 of 2019

IN THE MATTER OF:

**Deccan Chronicle Holdings Limited
(Acting through the Supervisory Committee
36, S.D. Road, Secunderabad,
Telengana- 500 003**

.. Applicant

Vs.

1. **Srei Multiple Asset Investment Trust-
Vision India Fund, Successful Resolution
Applicant**
86C, Topsia Road (South), Kolkata-700 046
2. **Samgrahah Commercial Private Limited,**
Vishwakarma, 86C, Topsia Road (South)
Kolkata- 700 046
3. **Shilpa Modi,**
**Director of Samgrahah Commercial Private
Limited,**
Vishwakarma, 86C, Topsia Road (South)
Kolkata- 700 046
4. **Dipen Chatterjee**
**Director of Samgrahah Commercial Private
Limited,**
And also Director in Corporate Debtor,
3/14, Bijaygarh, Jadavpur University,
Jadavpur,
Kolkata- 700 032
5. **Raghunath Ghosh,**
**Trustee of Srei Multiple Asset Investment Trust-
Vision India Fund,**
Vishwakarma, 86C, Topsia Road (South)
Kolkata- 700 046

6. **Trinity Alternative Investment Managers Limited,**
Vishwakarma, 86C, Topsia Road (South)
Kolkata- 700 046
7. **Chandra Shgekhar Samal,**
Director Trinity Alternative Investment Managers Limited,
Vishwakarma, 86C, Topsia Road (South)
Kolkata- 700 046
8. **Sushil Kumar Pal,**
Director Trinity Alternative Investment Managers Limited,
Vishwakarma, 86C, Topsia Road (South)
Kolkata- 700 046
9. **Ratan Kumar Sarawagi,**
Director Trinity Alternative Investment Managers Limited,
Vishwakarma, 86C, Topsia Road (South)
Kolkata- 700 046
10. **Ashish Kumar Dhandanya**
Director Trinity Alternative Investment Managers Limited,
Vishwakarma, 86C, Topsia Road (South)
Kolkata- 700 046
11. **Srivishnu Raju Nandyala**
Director appointed by
Srei Multiple Asset Investment Trust-
Vision India Fund to the Corporate Debtor
Plot No. 616, Road No. 33, Jubilee Hills,
Hyderabad- 500 033
Telengana
12. **Upewndra Rao Kancharana**
Director appointed by
Srei Multiple Asset Investment Trust-
Vision India Fund to the Corporate Debtor
H. No. 246, 3rd Floor, 5th Cross
RMV Stage-2, Block 2, Bengaluru,
North Bengaluri- 560 094

**..Respondents/
Contemnors.**

Present:

For Appellant: Mr. Abhijeet Sinha, Mr. Siddharth Sharma, Mr. Arjun Asthana, Mr. Saikat Sarkar, Ms. Anushka Sarkar, Advocates

For Respondents: Mr. Rishav Banerjee and Mr. Saptarshi Mandal, Advocates for R-1 & 2

Mr. Abhinav Vasisht, Sr. Advocate with Mr. Sidhartha Barua, Ms. Priya Singh, Mr. Praful Jindal, Advocates for Respondent No. 4

J U D G M E N T

[2nd September, 2022]

(Per Hon'ble Mr. Justice M. Satyanarayana Murthy

A Financial Creditor i.e., IDBI Bank filed the present contempt case under Section 425 of Companies Act, 2013 r/w Article 215 of Constitution of India and Section 15 of Contempt of Court Act 1971 against the Supervisory Committee of Deccan Chronicle Holdings Limited (hereinafter referred to '**DCHL**') represented by Ms. Mamta Binani, the erstwhile Resolution Professional and at present Member of Supervisory Committee to punish the Contemnors No. 1 to 4 for criminal contempt for lowering the authority of this Appellate Tribunal, interfering with the course of proceedings before this Tribunal and for obstructing administration of justice, finding them guilty for Contempt of Court. The following are the acts of contemnors alleged constituted criminal contempt.

(a) Approaching adjudicating authority for stay of direction passed by the Appellate Tribunal thereby obstructed administration of justice.

(b) This Tribunal vide order dated 22.05.2019 in the Appeal directed as follows:

“In the meantime, decision, if any taken by the Adjudicating Authority for implementation of Resolution Plan shall be subject the decision of this appeal”

The Resolution Plan was approved by Adjudicating Authority on 03.06.2019 on the next day i.e., on 04.06.2019, IDBI Bank issued notice to Successful Resolution Applicant (hereinafter referred to ‘SRA’) not to implement the Resolution Plan. While the matter stood that this Tribunal passed an order dated 05.12.2019 directing as follows:

“During pendency of the Appeal, if Successful Resolution Applicant has not taken over the charge of the Corporate Debtor, the Monitoring Committee with the held of the Resolution Professional will ensure that the Company remains a going concern”

But, on 16.07.2020, Contemnor No. 1 filed I.A. No. 1351 of 2020 for withdrawal of approved Resolution Plan same was heard and reserved orders by the Tribunal. On the date fixed for pronouncement of order i.e., on 6.8.2020, Contemnor No. 1 filed

another Application for withdrawal of I.A. No. 1351 of 2020 which was allowed. Filing of Application one after the other without any justified ground amounts to interference with Administration of Justice.

(c) On 01.06.2021, the Tribunal issued the following direction:

“It is also not in dispute that Resolution Plan has been approved by the Adjudicating Authority. The only major point which is in dispute is about the distribution of funds amongst financial creditors. The other issue involved is the stay of implementation of Resolution Plan by this Tribunal order dated 22.05.2019 whereas it is not so. The Resolution Applicant has not been barred from making payments as stipulated in the approved Resolution Plan.

11. In view of the above submissions and documents as produced during the virtual hearing through sharing on the screen, we are of the firm view that four years have lapsed and implementation of Resolution Plan has still not happened. Even after approval of Resolution Plan, two years have lapsed and still the Resolution Applicant has not injected any fund in the corporate debtor. We also confirm that this Tribunal order dated 22.05.2019 as stated above is not a stay order for implementation of Resolution Plan. The Resolution Applicant is hereby directed to go ahead and implement the plan and

make payments and take other actions as finally approved by the Adjudicating Authority.”

2. In pursuance of direction, Contemnor No. 1 only infused a sum of Rs. 60 Crores on 15.06.2021, filed Interlocutory Application on behalf of Contemnor before Adjudicating Authority, seeking indirect stay of operation of order of this Tribunal dated 01.06.2021.

3. Despite several directions of this Tribunal at various stages, though two years period has been elapsed, the Plan was not implemented but the Contemnors infused Rs. 60 Crores as a lip service on 15th June, 2021, thus the Contemnors have failed to further implement the Resolution Plan as failure to infuse balance of Rs. 348.06 Crores as agreed in the Resolution Plan amount to contempt.

4. It is further contended that with one hand the Contemnors assuring implementation of Resolution Plan while assuring implementation by Supervisory Committee, on the other hand the Contemnors have filed Interlocutory Applications before the Adjudicating Authority, at last on 27th August, 2021, the Contemnors served a copy of one such Applications filed before the Adjudicating Authority. The said Application was listed before the Adjudicating Authority on 8th September, 2021 as I.A.(IB)/480(HYD) 2021 and passed an order on the even date. Very filing of Applications without implementation of Resolution Plan amounting to interference with Administration of Justice.

5. This Tribunal on 1st June, 2021 observed as follows:
 - a. Resolution Plan has not been implemented for two years.
 - b. There was no stay on implementation of Resolution Plan.
 - c. Successful Resolution Applicant had not made any investment (by infusion of funds or otherwise) in Corporate Debtor
 - d. The Resolution Applicant is directed to go ahead and implement the Plan and make payments.

6. Though this Tribunal passed order dated 1st June, 2021, no further action was taken by Contemnors to implement the Plan.

7. The Contemnors approached the Adjudicating Authority by filing an Application I.A. (IBC)/480/(HYD)/2021 claiming stay and other incidental reliefs as mentioned in para 2.6 of the petition. Filing of such Interlocutory Application without any reason amounts to criminal contempt. Hence requested to punish the Contemnors for criminal contempt.

8. The Respondent Nos. 1 and 4 are served with notice and filed their counters denying the material allegations made in the petition while explaining the reasons that prompted them to file Applications and failure to implement the approved Resolution Plan. Those contentions of Contemnor Nos. 1 and 2 will be adverted to at appropriate time while deciding this Application.

9. Notice though ordered by this Tribunal to other Contemnor, the Applicant did not take steps to serve notice as mandated under Section 18 of Contempt of Courts Act 1971. Hence the contempt case against the other Contemnors is closed, while deciding the Contempt allegedly committed by Contemnor Nos. 1 and 4.

10. Before proceeding to decide the criminal contempt allegedly committed by Contemnor Nos. 1 and 4, it is appropriate to advert to relevant provisions of Contempt of Courts Act, 1971 dealing with limitation to take cognizance and mode of taking cognizance of criminal contempt.

11. Section 20 of the Contempt of Courts Act deals with limitation for action of contempt which is extracted hereunder for better appreciation:

*“20. **Limitation for actions for contempt.**- No Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.”*

12. A bare look at Section 20 of the Contempt of Courts Act, limitation to take cognizance is one year from the date of commission of alleged contempt. Section 20 prescribes only a condition precedent to exercise power of Court under Contempt Jurisdiction. Whether or not Section 3 of the Limitation Act is attracted, it is the Court's duty to see that this

condition precedent to exercise of Contempt Jurisdiction is satisfied. The Court cannot overlook it, nor can it defeat the statute, vide **“Dineshbai Vs. Kripalu Co-operative Housing”**¹ At the same time, Section 20 applies to all Contempts, whether Court took action *sue moto* or at the instance of a party, which had obtained Advocate Generals permission, no notice can be issued after expiry of one year, as held in **“Hari Nandan Vs. S N Pandeta”**²

13. In view of the clear embargo contained in Section 20 of Contempt of Courts Act, 1971 to exercise contempt jurisdiction to take cognizance, it is the duty of the Tribunal to decide, the issue of limitation to take cognizance of criminal contempt in the present petition.

14. Admittedly, the Contempt case is filed on 14th September, 2021, the alleged acts of Contemnors constituting criminal contempt must be within a year proceeding to the date of filing i.e., 14th September, 2021. For the contemptuous acts of Contemnors beyond one year preceding to date of filing, the Tribunal is not competent to issue notice for criminal contempt. The alleged acts of contemnors prior to 14th September, 2020 are not cognizable.

15. On examination of alleged acts of contempt pleaded in the petition, the acts of the Contemnors up to withdrawal of I.A. No. 135 of 2020 on 6th August, 2020 are beyond one year period prescribed under Section 20

¹ AIR 1980 Gujarat page 194 (D.B)

² AIR 1975 All page 48

of the Contempt of Courts Act, 1971. Therefore, the alleged acts of contempt upto withdrawal of I.A. No. 1351 of 2020 on 6th August, 2020 cannot be taken into consideration to determine the contempt of Court of Contemnors. The only direction of the Tribunal dated 01.06.2021 is not implemented and filed an Interlocutory Application before the Adjudicating Authority. The order of the Tribunal dated 01.06.2021 is already extracted at contention 'C' in the earlier paragraph. It is clear from the order that there is no stay and clarified the earlier order dated 22.05.2019 for implementation and Resolution Applicant is directed to go ahead to implement the Resolution Plan and make payments and other actions as finally approved by the Adjudicating Authority. The direction simplicitor obligates the SRA to implement the approved Resolution Plan but no time for implementing is fixed in the order. However, the SRA is bound to follow time line fixed under IBC even in the absence of specific period fixed by this Tribunal. So far the direction is not implemented in total, however infused 60 Crores to implement Resolution Plan on 15th June, 2021. Thus, the SRA started implementation of approved Resolution Plan but not in total. Without waiting for total implementation, the Applicant filed the contempt case on 14th September, 2021 i.e., within four months.

16. The Contemnors nos. 1 & 4 being erstwhile Resolution Professionals and Members of Supervising Committee did not take steps to implement the Resolution Plan. The Contemnors are only Supervising Committee Members, not the SRA who is under obligation to implement

the Resolution Plan infusing funds, when the Contempt Case against SRA is not prosecuted, the Contemnor Nos. 1 and 4, who are Members of Supervising Committee, cannot be found guilty for criminal contempt for the reason that the SRA has to infuse funds to implement Resolution Plan and unless the SRA infused funds, the Committee can do nothing to implement the Resolution Plan. Therefore, the alleged acts of Contemnors 1 and 4 cannot be said to be willful or intentional, to saddle with any liability for criminal contempt. Criminal Contempt is defined under Section 2(C) of Contempt of Courts Act, 1917 is as follows:

“2. ... (C) “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) Scandalizes or tends to scandalize, 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;***
- (iv) “High Court” means the High Court for a State or a Union territory, and includes the Court of the Judicial Commissioner in any Union territory.”***

17. Criminal contempt is divided into two categories, one is publication of any matter which scandalizes or tends to scandalize the authority of any Court etc. The second category is the doing of any act whatsoever, which scandalizes or tends to scandalize the authority of any Court. If an act is not a criminal contempt merely because there was no publication, such act would automatically fall within purview of the other category, because the latter consists of “the doing any other act whatsoever”. The latter category is thus, a residuary category, wide enough that no act of criminal contempt can possibly escape. The common denomination for both is that it scandalizes or tends to scandalize any Court, as held in **“S.K. Sundaram Inre”**³ .

18. From the principle laid down by Hon’ble Apex Court, to constitute criminal contempt, the act of Contemnor must scandalize or tend to scandalize the Court, lower or tends to lower the authority of Court. Secondly, prejudices or interference or tends to interfere with due course of any judicial proceedings, thirdly, obstruct or tends to obstruct the administration of justice in any other manner. Hence the alleged acts of Contemnor do not fall in any of the categories, as the acts of the Members of Supervisory Committee do not amount to interference or obstruction to any judicial proceedings or administration of justice. The Contemnors are only Members of Supervisory Body to act upon in directions subject to infusion of funds by SRA. Hence, we find that all acts of the

³ AIR 2001 SC Page 2374

Contemnors are within one year prior to 14.09.2021 would not fall within criminal contempt.

19. A special procedure is provided to take cognizance of criminal contempt, other than criminal contempt in the face of Supreme Court or High Court. In case of criminal contempt, other than contempt referred under Section 14 of the Act, Supreme Court or High Court may take action on its own motion or on a motion made by Advocate General or any other person, with the consent in writing of Advocate General. In relation to Union Territory of Delhi, such Law Officer, as the Central Govt. may by notification in the Official Gazette, specifying in this behalf or any other person with the consent of such Law Officer in writing.

20. In the present contempt case, the procedure contemplated under Section 15 of Contempt of Courts Act, 1971 has not been complied, consequently, the Contempt Case is liable to be closed as cognizance was taken in violation of mandatory procedure prescribed in Section 15 and major part of alleged acts of contempt are barred by Limitation prescribed by Section 20 of the Act.

21. In view of the foregoing discussion, we find no ground to punish the Contemnor Nos 1 and 4. However, it is open to the Creditors to take action, if any, in accordance with provisions of IBC and regulations thereunder, subject to permissibility.

In the result, Contempt Case is closed.

**[Justice Ashok Bhushan]
Chairperson**

**[Justice M. Satyanarayana Murthy]
Member (Judicial)**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

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