

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

CONTEMPT PETITION (CIVIL) NOS. 847-848 OF 2017

IN

SPECIAL LEAVE PETITION (CIVIL) NO. 16729-16730 OF 2012

KOTAK MAHINDRA BANK LIMITED ... PETITIONER(S)

VERSUS

MR. SANJIV GUPTA & OTHERS ... ALLEGED CONTEMNOR (S)

J U D G M E N T

DEEPAK GUPTA, J.

These Contempt Petitions have been filed by the petitioner alleging that the alleged contemnors have violated the order of this court dated 07.05.2012.

2. The factual background is that a Company known as Coventry Coil-O-Matic, Haryana Limited (hereinafter referred to as the borrower Company) had taken loans from ICICI Bank, IDBI and IFCI (consortium Banks). ICICI Bank assigned the debts payable to it by the borrower Company to the petitioner Kotak Mahindra Bank Limited (hereinafter called as KMBL). IFCI assigned its non-performing assets with regard to the same loan facilities, initially to Dhir and Dhir Asset Reconstruction and Securitisation Company Ltd., now known as Alchemist Assets Reconstruction Company Ltd., (hereinafter referred to as 'Alchemist'). It appears IDBI also assigned the debts payable to it to Alchemist.

3. KMBL filed proceedings for recovery of its dues i.e. Rs.4,72,06,961/- before the Debts Recovery Tribunal, Delhi. Alchemist initiated proceedings under Section 13 of the Securitisation and Reconstruction of financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'). Winding up petition under the Companies Act, 1956 was filed by the KMBL. The borrower Company filed a writ petition challenging the proceedings and the SARFAESI Act. Both were heard together. The Punjab and Haryana High Court dismissed the

writ petition filed by the borrower Company. A Letters Patent Appeal No.1755 of 2010 (LPA for short) was filed by the borrower Company. In this appeal, an interim order was passed on 09.08.2011, relevant portion of which reads as follows:-

“13. Accordingly, we direct that without prejudice to rights and contentions of the parties, the appellant must pay a sum of Rs.12 crores to Alchemist and Rs.6.5 crores to Kotak Mahindra. The creditors will be at liberty to proceed to recover the same by sale of land appurtenant to plant and machinery which is said to be about 18 acres. The sale will be by way of a tripartite agreement under which the sale consideration will be received directly by the creditors and the documents will be executed by the appellant. The sale may be finalized after permission of this Court. Out of deposit of Rs.5 crores in this Court, a sum of Rs.3 crores be given to Alchemist and Rs.2 crores to Kotak Mahindra Bank. This payment will be adjusted towards the amount mentioned above. After recovery of Rs.13.5 crores, balance amount may be deposited in this Court. Interim order is modified accordingly.

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4. The aforesaid order was challenged by Alchemist by way of SLP(C)No.34290 of 2011 as well as by the borrower Company by way of SLP No.16729-30 of 2012 in this Court. The SLP filed by the borrower Company was disposed of vide order dated 07.05.2012. This court partly modified the directions of the High Court quoted hereinabove, and passed the following order:-

“1. Respondent No.2 i.e. M/s Alchemist Assets Reconstruction Co. Ltd and the petitioner-Company shall get the land, shown in Blocks ‘Z’ and ‘Y’ of the revised site plan (as

discussed in the Court), to be placed on record by the petitioner, evaluated. Respondent No.2 shall communicate the value of the land to the petitioner within four weeks from today.

2. An option shall be given to the petitioner to accept the said valuation within four weeks of the date of communication and pay the entire amount in terms thereof within a further period of eight weeks from the date of acceptance of the offer.

3. However, if the offer made by respondent No.2 is not acceptable to the petitioner, it will be open to the said respondent to take steps for disposal of the land, as directed in the impugned order, strictly in accordance with the procedure laid down in Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002.

4. Out of the amount(s) so realized, respondent No.2 shall pay to respondent No.9, the balance amount of Rs.4.5 crores, as directed by the High Court.

5. The amount(s), so received by the said two respondents, shall, in the first instance, be appropriated towards the principal amount due from the petitioner.

6. The surplus amount, if any, shall be deposited by respondent No.2 in the High Court and shall be subject to further orders that may be passed by the High Court regarding its disbursement.

7. Revised site plan, with supporting affidavit, shall be filed in this Court within two days from today with advance copy to learned counsel for the respondents.

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5. In terms of the order of the High Court, out of Rs. 5 crores lying in deposit, Rs. 3 crores were to be paid to Alchemist and Rs. 2 crores to KMBL. This Court ordered that after sale of the property by Alchemist in terms of the order, Alchemist was to pay Rs.4.5 crores to KMBL and Alchemist was to get Rs. 9 crores. Surplus

amount beyond Rs. 13.5 crores were to be deposited in the High court subject to further order for its disbursement.

6. It is important to note that Alchemist filed Review Petition Nos. 1288 & 1289 of 2012 for review of the orders which were dismissed on 24.07.2012. Thereafter, it appears that some application was filed in the SLP filed by the borrower Company. Both the SLPs filed by the borrower Company and the one filed by Alchemist were listed on 02.07.2014. The IAs filed in SLP by the borrower Company were disposed of having become infructuous. The SLP filed by Alchemist was disposed of on 02.07.2014 in the following terms:-

“I.A.Nos.14-15 in SLP (C) No. 16729-16730/2012

In view of the latest development in the matter, these Interlocutory Applications have become infructuous and are disposed of as such.

SLP(C) No.34290 of 2011

The learned senior counsel appearing for the petitioner has submitted that in view of the judgments delivered by this Court in *“United Bank of India vs. Satyawati Tondon & Ors (2010) 8 SCC 110”*, *“Kanaiyalal Lalchand Sachdev & Ors. Vs. State of Maharashtra & Ors. (2011) 2 SCC 782”* and *“General Manager, Sri Siddeshwara Cooperative Bank Ltd. & Anr. Vs. Ikbhal & Ors. (2013) 10 SCC 83,* the appeal which has been filed by the petitioner in the High Court should be allowed.

However, the learned senior counsel appearing for the respondents did not agree to the said submission.

In view of the said fact, we feel that it would be better if the petitioner approaches the High Court with an appropriate application so that the High Court can decide the issue at an early date.”

7. According to the Alchemist, it made various attempts to sell the property at a higher price but the property could only be sold pursuant to auction notice dated 24.01.2016 for a sum of Rs.13.50 crores. According to the KMBL this sale was done in a clandestine manner, without informing KMBL about the dates fixed and also in violation of the directions of the High Court. This has been denied by Alchemist. We make it clear that we are not going into this aspect of the matter because it will be for the High Court to decide whether Alchemist has conducted the sale properly or not?

8. On coming to know of the sale, KMBL sent various e-mails to Alchemist requesting for details of the sale and further requested that a sum of Rs.4.5 crores be paid to it in terms of the order of the High Court and as directed by this Court in its order dated 07.05.2012. This amount was not paid and hence these Contempt Petitions.

9. At this stage we may note that on 08.02.2019 the Alchemist was directed to deposit a sum of Rs. 4.5 crores in this Court. It was further ordered as follows:-

Once the aforesaid deposit is made the contentions advanced by the alleged contemnors that no amount is due to the petitioner – Kotak Mahindra Bank Limited and the scope and purport of the settlement agreement will be considered by the Court.

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10. KMBL contends that Alchemist, by not paying Rs.4.5 crores in terms of the order dated 07.05.2012, is guilty of contempt. The stand of the alleged contemnors is that Alchemist being an assignee of IFCI and IDBI, is entitled to recovery of 98.12% of the total outstanding proceedings, whereas the KMBL is entitled to recover 1.88%. In the alternative, it is submitted that as per the claim filed by KMBL it is entitled to 9.76% out of the total recoveries. The case of the Alchemist is that KMBL has already been paid Rs. 2 crores which is much in excess of the amount due to it. It is further stated that pursuant to the order dated 02.07.2014 passed by this Court, Alchemist filed an application in February, 2017 before the High Court for modification of the interim order dated 09.08.2011 and this application is pending. It is submitted that the alleged contemnors are not guilty of wilful disobedience of the order of this Court.

11. On going through the records and on careful perusal of the entire material and the orders referred to above, we cannot appreciate the conduct of Alchemist and its officers. Both the High Court and this Court had clearly directed that out of the amount recovered by sale of the properties of the borrowed Company by Alchemist, Rs.4.5 crores were to be paid to KMBL, and Rs.9 crores were to be retained by Alchemist. Any amount in excess was to be deposited in Court. This was in addition to the disbursal of Rs. 5 crores already made in which Alchemist got Rs. 3 crores and KMBL got Rs. 2 crores. This order of 07.05.2012 has not been varied, modified or vacated by any subsequent order. The alleged contemnors can derive no benefit from the order of this Court dated 02.07.2014 permitting them to approach the High Court. Unless the earlier order is modified, the alleged contemnors were bound to obey the orders of this Court as well as the High Court.

12. We may also note that though liberty was given to Alchemist on 02.07.2014 to approach the High Court, such application was filed only in February, 2017. There is no explanation as to why such application was not filed for three years. It is obvious that this application was filed only after the sale certificate was issued

and KMBL sent various communication to Alchemist to pay a sum of Rs.4.5 crores to it. Having held so, we are of the view that it may not be necessary to take action against the alleged contemnors under the Contempt of Courts Act, in view of the fact that pursuant to the order of this Court they have now deposited Rs.4.5 crores.

13. It was urged on behalf of the Alchemist that in terms of order dated 08.02.2019, the alleged contemnors' contention that no amount is due to KMBL has to be considered. We are not inclined to do so because according to KMBL even the sale was not conducted in a proper manner. In these proceedings it may not be proper for the Court to decide all these issues, especially when they arise out of interim orders of the High Court. It would be better if the High Court goes into all these aspects.

14. In view of the above discussion, we direct that the amount of Rs.4.5 crores deposited by Alchemist shall be paid to KMBL along with interest, if any, accrued thereupon. This payment will however be subject to the decision of the High Court with regard to the amount actually due to KMBL and if the High Court finds that a lesser amount is due to KMBL then KMBL shall refund the excess amount along with interest, if any, as determined by the High Court

to Alchemist. The Contempt Petitions are closed in the aforesaid terms.

.....J.
(Deepak Gupta)

.....J.
(Aniruddha Bose)

New Delhi
September 23, 2019